

S. Swamirathnam vs State Of Madras on 14 September, 1956

Equivalent citations: AIR1957SC340, 1957CRILJ422, AIR 1957 SUPREME COURT 340

JUDGMENT

Imam, J.

1. These three appeals are by special leave against the decision of the High Court of Madras. The appellants were tried for the offence of conspiracy to cheat members of the public and for specific offences of cheating in pursuance of that conspiracy. The Additional Sessions Judge of Tirunelveli acquitted appellant Swamirathnam of all the charges framed against him. He convicted the appellants Abbas and Abu Bucker of the offence of conspiracy. Abbas was convicted by him with respect to the charges framed against him concerning the offence of cheating P. W. 47, Krishnaswami Naicker. He, however, acquitted Abu Bucker with respect to all the charges concerning specific offences of cheating framed against him. Appeals were filed in the High Court by the convicted persons and by the Government against the acquittal of Swamirathnam and Abu Bucker. It is unnecessary, in the present case, to mention the names of other accused, who were convicted or acquitted by the Sessions Judge, as their cases are not before us. The High Court set aside the acquittal of Swamirathnam and convicted him for the offence of conspiracy and the offence of cheating Ramaswami Mudaliar, P. W. 91, who was examined at the trial as an approver. It also set aside the acquittal of Abu Bucker of the offence of cheating under charge No. 11 and convicted him of that offence.

2. Both the courts below, relying on the oral and documentary evidence in the case, held it as a fact that there had been a conspiracy during the years 1945-48 to cheat members of the public between some of the accused and the approvers Ramaswami Mudaliar and Vellayam Pillai examined as P. Ws. 91 and 61 respectively. The method adopted for cheating was to persuade such members of the public, as could be persuaded, to part with their money to purchase counterfeit Rs. 5 currency notes at half their face value and after having obtained their money to decamp with it. When a member of the public handed over his money, at a certain stage, one of the conspirators pretending to be a Police Officer would arrest the man who had the box containing their money and take him away with the box. The victim was thus deprived of his money without even having a single counterfeit currency note in his possession in exchange of the genuine money paid by him. We have scrutinized with care the judgments of the Sessions Judge and the learned Judge of the High Court and find that they were amply justified, having regard to the state of the evidence on the record, in coming to the conclusion that the case of the prosecution concerning the existence of the conspiracy as charged to cheat the members of the public, had been proved. We are unable to find any special circumstance, arising from the evidence on the record, which would justify our interference with the finding of fact arrived at by the courts below. Indeed, the evidence is overwhelming and convincing to prove the

case of the prosecution that there had been a conspiracy in the relevant years to cheat the members of the public between some of the accused and the aforesaid approvers.

3. The substantial question for consideration in these appeals is whether it has been proved that the appellants were members of the above-mentioned conspiracy and whether they are guilty of the specific charges of cheating in pursuance of that conspiracy. In order to determine this. It is desirable that the cases of the appellants be considered separately.

4. So far as the appellant Abbas is concerned both the courts below found him guilty of the offence of conspiracy and the specific offence of cheating Krishnaswami Naicker, P. W. 47. The charge of cheating Krishnaswami Naicker is charge No. 11. Krishnaswami Naicker has been believed by both the trial Court and the Appellate Court and his evidence was corroborated by several prosecution witnesses including the approver Ramaswami Mudaliar, P. W. 91. Appreciation of evidence is primarily for the courts of fact and we can find no reasonable ground for coming to the conclusion that P. W. 47, Krishnaswami Naicker has perjured himself. It was, however, argued on behalf of this appellant that the other witnesses who corroborate Krishnaswami Naicker are the approver Ramaswami Mudaliar and witnesses who must be regarded as accomplices. The learned Judge of the High Court did not think that these witnesses, other than the approver, could be truly described as accomplices. Assuming, however, that these witnesses may be regarded as accomplices, the conviction of the appellant does not entirely depend upon their evidence. The main evidence against this appellant is that of Krishnaswami Naicker, P. W. 47, the victim of the cheating, who cannot possibly be described as an accomplice. The judgment of the courts below clearly show that the evidence of Krishnaswami Naicker was examined with great care and no part of his evidence has been placed before us which would suggest to us that the courts below were unreasonable in relying upon Krishnaswami Naicker's evidence. The offence of cheating this individual as against this appellant has, therefore, been amply proved. It was conceded before the High Court by the Advocates for the appellants, that if a specific instance of cheating was proved beyond doubt against any of the accused that would furnish the best corroboration of the offence of conspiracy because conspiracy was the root and the specific instances were the fruit. The charge of cheating Krishnaswami Naicker having been proved against this appellant, ample corroboration of the evidence of the approver Ramaswami Mudaliar, P. W. 91, that this appellant participated in the conspiracy to cheat the members of the public is furnished thereby. The conviction of this appellant, therefore, under Section 120-B and Section 420, Indian Penal Code was entirely justified.

5. Appellants Swamirathnam and Abu Bucker were separately represented in this Court and their Advocates made their respective submissions on their behalf. As a common submission was made on their behalf, it would be convenient to consider it first. It was urged that having regard to the decisions of this Court and the Privy Council, the High Court ought not to have set aside the order of acquittal made by the Sessions Judge with respect to these appellants. Appellant Swamirathnam having been acquitted of all the charges framed against him and appellant Abu Bucker having been acquitted of the offence of cheating (charge No. 11), the High Court in setting aside the acquittal, acted unreasonably as there was no compelling necessity for it to do so. The evidence of the approver Ramaswami Mudaliar, P. W. 91 had not been corroborated by conclusive evidence which would show the connection of the appellants with the crime stated in the charges framed against

them. It appears from his judgment that the learned judge of the High Court was fully aware of the decisions of this Court and of the Privy Council as to the circumstances in which the High Court might be justified in setting aside an order of acquittal. It remains to consider whether in setting aside the order of acquittal, the learned judge acted unreasonably and beyond the scope of the decisions of this Court and the Privy Council.

6. We will first consider the charges of conspiracy framed against the appellant Swamirathnam. This appellant had been acquitted by the Sessions judge of this charge largely on the ground that there was no reliable evidence of corroboration of the approver's testimony connecting him with this crime. The documentary evidence upon which the prosecution relied to corroborate the approver Ramaswami Mudaliar, P. W. 91, was not considered sufficient by the Sessions Judge, as he was of the opinion that they were not inconsistent with the defence of this appellant. The learned Judge of the High Court, however, thought otherwise. It will be necessary, therefore, to refer to some of these documents in order to see whether the approver Ramaswami Mudaliar has been sufficiently corroborated to prove the charge of conspiracy against this appellant beyond all reasonable doubt. So far as the evidence of the approver is concerned, it fully establishes the offence of conspiracy under charge No. 1 framed against this appellant. The evidence of the approver shows that he was induced to part with a considerable sum of money in the hope that he would get counterfeit currency notes double that value -- a hope which never materialised. Ramaswami Mudaliar's evidence shows that he was becoming restless as he told Abu Bucker that he had incurred much loss in the counterfeit notes business and the creditors were worrying him and that he should recoup his loss and correspondence passed between him and Abu Bucker. The documents filed in this case show that during the months of October to December, 1946. Abu Bucker wrote to Ramaswami Mudaliar from Colombo. Ex. P. 301 written by Abu Bucker to Ramaswami Mudaliar is dated the 23rd of December, 1946. It makes interesting reading and, in our opinion, corroborates Ramaswami Mudaliar. In this letter, Abu Bucker accepted the charge which Ramaswami Mudaliar had made against him that he had deceived the latter. Abu Bucker expresses the hope that he would relieve Ramaswami Mudaliar of his monetary difficulties, that it will take some months for the business to run properly and that at least the money paid should be got back now. According to Ramaswami Mudaliar, matters were so arranged between him and the appellants Abu Bucker and Swamirathnam that four promissory notes, one for Rs. 20,000 and three for Rs. 10,000 each, were written by Swamirathnam and executed by Abu Bucker in his favour. The writing and execution of promissory notes were clearly on the evidence of the approver, in connection with the conspiracy to cheat. Ex. P. 177 dated the 18th of July, 1946 is a letter written by Abu Bucker to accused No. 7, Guru alias Mowna Guru in which he states that Swamirathnam requires money, as everyone of them does including himself. He suggests that Ramaswami Mudaliar should be met and spoken to and that if Ramaswami Mudaliar comes to Kandy (Ceylon), he will be able to get money on executing a promissory note and shall pay for them all. It was his belief that he could get this done and that Ramaswami Mudaliar would give money. He finally suggests that if Ramaswami Mudaliar could be brought to Kandy in good humour, he would talk to him and can finish the business happily. This letter was recovered from the house of Swamirathnam. Swamirathnam was questioned by the Sessions judge about this letter and he said, he did not know anything about it. There is therefore, no explanation from this appellant as to how a letter written by Abu Bucker to Guru, accused No. 7, came to be recovered from his house. The contents of this letter clearly suggest that Abu Bucker.

Swamirathnam and others were in need of money and that Ramaswami Mudaliar should be persuaded to come to Kandy in a good humour and that Abu Bucker would execute a promissory note in favour of Ramaswami Mudaliar and thus obtain some money from him. Ex. P.89 dated the 2nd of November, 1946 is a letter written by Abu Bucker to accused No. 11, U. K. Krishnaswami Chettiar from Colombo. He suggests that Ramaswami Mudaliar had considerable amount and that in spite of his fears on one hand, he was prepared for anything counting on the support of Swamirathnam. Ex. P.151 dated the 8th of November, 1946 is a letter written by Abu Bucker to Swamirathnam. It was recovered from the house of the appellant Swamirathnam. This letter has been fully quoted by the learned Judge of the High Court in his judgment. It clearly establishes that more money should be obtained from Ramaswami Mudaliar on the execution of a promissory note. Although the letter speaks of getting rupees ten or rupees fifteen more in addition to rupees thirty paid, it is not disputed that these figures referred to Rs. 10,000 or Rs. 15,000 and Rs. 30,000. The appellant Swamirathnam was questioned by the Sessions Judge concerning this exhibit and he admitted that this letter was in connection with the four promissory notes written by him and executed by Abu Bucker about which Ramaswami Mudaliar had spoken. Ex. 91 dated the 14th of November, 1946 is a letter from Abu Bucker to accused No. 11, U. K. Krishnaswami Chettiar written from Colombo. In this letter Abu Bucker speaks of the trade not being one of selling in the "shandy or in the shop" and that Krishnaswami Chettiar and the likes of him do not know how and when to talk and their policy was to talk to each person in a different manner and to conduct themselves in such a way as not to betray the one to the other and that this was a trade secret, and that reliance was entirely placed upon Swamirathnam as conditions stood. Exs. P.160 and P.161 dated the 13th of November, 1946 are letters written by Abu Bucker to Swamirathnam and recovered from the house of the appellant Swamirathnam. These letters show the desire for a meeting with Ramaswami Mudaliar and settling properly with him and that they can get any amount of money from him, but he must be given some scope. Ex. P.295 and Ex. P.296 dated the 14th of November, 1946 are letters from Abu Bucker to Ramaswami Mudaliar written from Colombo in which Abu Bucker suggests that Ramaswami Mudaliar may have met Swamirathnam, who must have spoken to him about everything. Ex. P.296 particularly shows that Ramaswami Mudaliar must have been worried and suffering from great anxiety. Abu Bucker entreats Ramaswami Mudaliar not to dream of giving up, no matter what may happen, and that as promised at the retiring room, Tanjore, whatever amount Ramaswami Mudaliar had paid relying upon his word, he was prepared to keep up for ever as promised. Abu Bucker further gives the warning not to give any bribe on the advice of anyone as had occurred previously and that Ramaswami Mudaliar should trust no one except the appellant Swamirathnam. It has been necessary to refer in some detail to these documents in view of the opinion of the Sessions Judge that these letters are consistent with the defence of the appellant. The defence of the appellant, without going into details, was substantially that the correspondence referred to transactions which had nothing to do with conspiracy or any act of cheating. So far as the execution of the promissory notes, about which the approver Ramaswami Mudaliar spoke, Swamirathnam admitted having written them and Abu Bucker having executed them. But according to him, this was an innocent transaction, as he had intervened in a dispute between Ramaswami Mudaliar and Abu Bucker concerning some business transaction and had settled the matter as a result of which the promissory notes had been written. The correspondence, however, shows that the originator of the idea of the execution of the promissory notes was Abu Bucker, that Abu Bucker and Ramaswami Mudaliar could not have been at loggerheads on any business transaction and that

an attempt was being made to persuade Ramaswami Mudaliar to part with more money which he might do if promissory notes were executed in his favour. It is significant that in November, 1946 Abu Bucker is urging Ramaswami Mudaliar not to give up and that he would abide by his word with respect to the money already paid by the approver. He warns the approver against giving any bribe to anyone, although this had been done previously. It is not understood how the question of giving bribe with respect to an innocent transaction arises. The approver, however, has clearly stated in his evidence that accused No. 6, Swami Shanmugam had told him that if a large bribe was paid to District Superintendent of Police, Ramaswami Mudaliar could be saved and that Rs. 7,000 would have to be paid. He asked accused No. 10, Kumaravel Chettiar to pay Rs. 7,000 to accused No. 6, Swami Shanmugam. Four days later accused No. 6 Swami Shanmugam told him that the District Superintendent of Police had said that the bribe was not sufficient and wanted Rs. 5,000 more. Ramaswami Mudaliar sent Rs. 5,000 through accused No. 7, Guru alias Mowna Guru and that subsequently accused No. 6, Swami Shanmugam had received monies on various occasions from him amounting to Rs. 10,000 for paying bribe. It may be mentioned that this story of bribe, spoken to by the approver, Ramaswami Mudaliar was in connection with the counterfeit notes transaction and had taken place before the execution of the above-mentioned promissory notes. In our opinion, the circumstances in which the promissory notes were executed, as spoken to by the approver, receive corroboration from these letters in material particulars regarding the story given by him. The corroboration need not be of a kind which proves the offence against the accused. It is sufficient if it connects the accused with the crime. As we read the letters referred to above, they clearly corroborate the approver and prove the connection of this appellant with the conspiracy spoken to by the approver.

They further prove very close association between the approver Ramaswami Mudaliar, Abu Bucker, this appellant and some of the other accused in the case. The part played by this appellant in the execution of the promissory notes establishes the case of the prosecution both in respect of the offence of conspiracy charged and the offence of cheating framed under charge No. 8. It is unnecessary to go into the particulars of evidence concerning charge No. 8 because the matter is academic since we are of the opinion that the learned Judge of the High Court was justified in convicting this appellant of the offence of conspiracy under charge No. 1. It is sufficient to state that the learned Judge of the High Court has given good grounds for holding that the offence under charge No. 8 has been proved against this appellant and, therefore, he was rightly convicted by the High Court and wrongly acquitted by the Sessions Judge.

7. On behalf of the appellant Abu Bucker it was contended that there has been misjoinder of charges on the ground that several conspiracies, distinct from each other, had been lumped together and tried at one trial. The Advocate for Swamirathnam, however, did not put forward this submission. We have examined the charge carefully and find no ground for accepting the contention raised. The charge as framed, discloses one single conspiracy, although spread over several years. There was only one object of the conspiracy and that was to client members of the public. The fact that in the course of years others joined the conspiracy or that several incidents of cheating took place in pursuance of the conspiracy did not change the conspiracy & did not spilt up a single conspiracy into several conspiracies. It was suggested that although the modus operandi may have been the same, the several instances of cheating were not part of the same transaction. Reliance was placed on the

case of Sharpurji Sorabji v. Emperor. AIR 1936 Bom 154 (A) and on the case of Choragudi Venkatadari In re ILR 33 Mad 592 (B). These cases are not in point. In the Bombay case no charge of conspiracy had been framed and the decision in the Madras case was given before Section 120-B, was introduced into the Indian Penal Code. In the present case, the instances of cheating were in pursuance of the conspiracy and were therefore parts of the same transaction.

8. The appellant Abu Bucker had been found guilty of the offence of conspiracy under charge No. 1 by the Sessions Judge and the High Court. There was ample evidence on the record to justify this conviction and we have been unable to find any reasonable ground for suspecting that the conviction was unjustified. So far as the charge for the specific offence of cheating under charge No. 11 is concerned, although he was acquitted by the Sessions Judge, we think, that the High Court was justified in setting aside the acquittal and convicting him of the offence under this charge. It is unnecessary to consider in detail the material upon which the High Court found this appellant guilty of the offence under this charge, as it will make no difference in the ultimate result so far as the case of the appellant is concerned, if he was rightly convicted by both the Courts below for the offence of conspiracy under charge No. 1.

9. It appears to us that there is no merit in these appeals and they are accordingly dismissed.