Hanumant vs The State Of Madhya ... on 23 January, 1952

Equivalent citations: 1975 AIR 1083

PETITIONER:
HANUMANT

Vs.

RESPONDENT:
THE STATE OF MADHYA PRADESH.RAOJIBHAITHE STATE OF MADHYA PRA

DATE OF JUDGMENT:
23/01/1952

BENCH:
GUPTA, A.C.
BENCH:
GUPTA, A.C.
BEG, M. HAMEEDULLAH
CHANDRACHUD, Y.V.

CITATION:
1975 AIR 1083

ACT:
Criminal trial--Circumstantial evidence--Sufficiency of evidence for conviction--Caution against basing conviction on guess or suspicion--Admission--Must be taken as a whole.

HEADNOTE:
In dealing with circumstantial evidence there is always the danger that conjecture or suspicion may take the place of legal proof. It is therefore right to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency, and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.
Reg. v. Hodge [(1838) 2 Lew. 227] referred to.
An admission made by a person whether amounting to a

confession or not cannot be split up and part of it used against him. It must be used either as a whole or not at all.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 56 of 1951.

Appeals by special leave from the Judgment and Order dated the 9th March, 1950, of the High Court of Judicature at Nagpur (C. R. Hemeon J.) in Criminal Revisions Nos. 152 and 153 of 1949 arising out of Judgment and Order dated the 24th March, 1949, of the Court of the Sessions Judge, Nagpur, in Criminal Appeals Nos. 26 and 27 of 1949 and Judgment and Order dated the 15th January, 1949, of the Court of the Special Magistrate, Nagpur, in Criminal Case No. 1 of 1948.

N.C. Chatterjee (B. Bannerjee and A.K. Dart, with him) for the appellant in Criminal Appeal No. 56 of 1951. Bakshi Tek Chand(K. V. Tarnbay, with him) for the appel- lant in Criminal Appeal No. 57 of 1951.

T.L. Shivde, Advocate-General of Madhya Pradesh (T. P. Naik, with him) for the respondent.

1952. Sept. 23. The Judgment of the Court was delivered by MAHAJAN J.-- This is a consolidated appeal by special leave from the two orders of the High Court of Judicature at Nagpur passed on the 9th March, 1950, in Criminal Revisions Nos. 152 and 153 of 1949.

On a complaint filed by the Assistant Inspector General of Police, Anti-Corruption Department, Nagpur, the appel- lant in Criminal Appeal No. 56 of 1951 (H. G. Nargundkar, Excise Commissioner, Madhya Pradesh), and the appellant in Criminal Appeal No. 57 of 1951 (R.S. Patel) were tried in the court of Shri B.K. Chaudhri, Special Magistrate, Nag- pur, for the offence of conspiracy to secure the contract of Seoni Distillery from April, 1947, to March 1951 by forging the tender, Exhibit P-3A, and for commission of the offences of forgery of the tender (Exhibit P-3A) and of another document, Exhibit P-24. The learned Special Magistrate convicted both the appellants on all the three charges. He sentenced R.S. Patel to rigorous imprisonment for one year under each charge and to pay fines of Rs. 2,000, Rs. 2,000, and Rs. 1,000, under the first, second and third charges respectively. The appellant Nargundkar was sentenced to rigorous imprisonment for six months under each charge and to pay fines of Rs. 2,000, Rs. 2,000 and Rs. 1.,000, under the first, second and third charges respectively. Each of the appellants appealed against their respective convictions and sentences to the Court of the Sessions Judge, Nagpur. The learned Sessions Judge quashed the conviction of both the appellants under the first charge of criminal conspiracy under section 120-B, I.P.C., but maintained the convictions and sentences under section 465, I.P.C. or the charges of forging Exhibits P-3 (A) and P-24. Both the appellants went up in revision against this decision to the High Court but without any success. An application was then made under article 136 of the Constitution of India for special leave to appeal and this was allowed by this Court on 24th March, 1950 The appellant, Nargundkar, is a member of the Central Provinces & Berar Provincial Service and held

the substan- tive post of Deputy Commissioner for several years. In April, 1946, he was appointed Excise Commissioner. Madhya Pradesh, and continued to hold that office till the 5th September, '1947.

The appellant, R.S. Patel, is a sugar Technologist and Chemical Engineer. He received his technical education and practical training in America and after working as Chief Chemist and General Manager in factories in Madras for five years, came to the Central Provinces in 1944, when the Provincial Government gave him a licence to set up a dis- tillery for the manufacture of industrial spirit. On the 11th September, 1946, Nargundkar in his capacity as Excise Commissioner invited tenders for working the Government distillery at Seoni and supplying spirit to certain specified districts f or a period of four years from 1st April, 1947, to 31st March, 1951. The last date for submitting the tenders was the 31st October, 1946. In response to this tender notice, five tenders were filed including those filed by (1) appellant, R.S. Patel, (2) K.B. Habibur Rahman, (3). Zakirur Rahman, and (4) Edulji V. Doongaji (P. W. 4), in sealed covers with the Excise Commis- sioner on the 31st October, 1946, and he handed them over with the seals intact to the office superintende. nt, S.W. Gadgil (P. w. 13), for safe custody. Gadgil took them to his room and kept them under lock and key in the office safe.

The case for the prosecution is that on the 9th Novem- ber, 1946, accused Nargundkar took these sealed tenders home, that the tenders were opened by him at his house, that the rates of the tender (Exhibit P-6) of E.J. Doongaji (P. W. 4) were divulged to accused 2 (R. S. Patel), who was allowed to substitute another tender (Exhibit P-3A), containing rates lower than those of Doongaji, that thereafter these open tenders were brought to the office on the 11th November, 1946, and given to Amarnath (P.W. 20) who was the Assistant Commissioner of Excise, for submitting a report and that on the recommendation of Nar- gundkar the tender of accused 2 (Patel) was accepted and the contract was given to him. In May, 1947, on receipt of an application (Exhibit P- 1) from one Dilbagrai (P. W. 14), enquiries were started by the Anti-Corruption Department. Both the accused became aware of the enquiry. In order to create evidence in their favour they brought into existence a letter (Exhibit P-24) and antedated it to 20th November, 1946. This document was forged with the intention of com- mitting fraud and of causing injury to Amarnath (P. W. 20) and also to Doongaji (P.W. 4). Exhibit P-24 is alleged to have been typed on a typewriter (Article A) which was pur- chased on the 30th December, 1946, by the National Industri- al Alcohol Co., Nagpur, of which accused Patel was the managing director. It Was further alleged that the endorse- ment made by accused 1 (Nargundkar) in the said letter "No action seems necessary. File", and marked to Superintendent "S" was not made on the 21st November, 1946, which date it bears. This letter was handed over by accused 1 to the Office Superintendent, S.W. Gadgil (P.W. 13) about the middle of August, 1947, and thereafter accused I wrote a letter (Exhibit P. 26), on the 2nd October, 1947, to Sri S. Sanyal (P.W. 19) who was then the Excise Commissioner, requesting that this letter (Exhibit P-24) and a note sheet (Exhibit P-27) be kept in sale custody.

Both the accused denied the commission of the offences of criminal conspiracy, forgery and abetment thereof. Nargundkar denied having attended office on the 9th Novem- ber, 1946. He denied having taken the tenders home. Ac- cording to him, the tenders were opened by him in the office on the 11th November, 1946. Accused 2 denied that the tender of Doongaji was shown to him

by accused 1 between the 9th and 11th November, 1946. He stated that the tender (Exhibit P- 3A) was the original tender submitted by him on the 31st October, 1946. As regards Exhibit P-24, it was denied that it was fabricated or antedated. Accused 2 stated that it was not typed on article A. He also alleged that the allegations made in Exhibit P-24 were correct. Accused Nargundkar stated that the endorsement was made by him on the 21st November, 1946. The first charge having failed, nothing need be said about it herein.

In order to prove the second charge the prosecution had to establish that Gadgil, P.W. 13, handed over the sealed tenders on the 9th November, 1946, to accused Nargundkar, that the latter took them home, that between the 9th and the 11th November he met Patel at his house or elsewhere and that accused. Nargundkar showed or communicated the particu- lars of the tender of Doongaji to accused Patel who substi- tuted Exhibit P-3A for his original tender before the 11th November, 1946. Admittedly there is no direct evidence to prove any of these facts except the first one, and the nature of the case is such that recourse could only be had to circumstantial evidence to establish those facts. The fact that the sealed tenders were handed over by Gadgil to accused Nargundkar on the 9th November has been held proved solely on the uncorroborated testimony of Gadgil as against the denial of Nargundkar. Gadgil was himself a suspect in the case. He was kept by the police away from the office for about eight months during the investigation, he was asked to proceed on leave at the instance of the police and his leave was extended at their request. On the expiry of his leave he was kept off duty without salary for a period of about five months but later on he was paid his full salary after he had given evidence in support of the prosecution. He made addi- tions and improvements on vital points from stage to stage of his deposition and in certain particulars his statement was contradicted by Ramaswami, P.W. 80. On his own admission he is an accomplice in respect of the forgery of Exhibit P-27, one of the documents al- leged to have been forged for purposes of the defence but concerning which no prosecution was started. Exhibit P-27 bears date 31st October, 1946. Gadgil's statement about it is as follows:

> "He (Nargundkar) put down his signature and the date 31st October, 1946. This order was actually written by Sh. Nargundkar in the note-sheet, Exhibit P-27, in the month of July or August, 1947. The dates were antedated. In the margin of the note sheet I have put down my initials S.W.G. and put the date 31st October, 1946. This note-sheet was not prepared on gist October, 1946. He asked me to keep it in my custody."

The witness admittedly became a party to the preparation of a forged document. Whether he was telling the truth, or he was telling a lie, as appears likely from his cross- examination, he is in either event, not a person on whom any reliance could be placed. It is curious that this aspect of the evidence of Gadgil has not been noticed by any of the three courts below.

When the court of first instance and the court of appeal arrive at concurrent findings of fact after believing the evidence of a witness, this court as the final court does not disturb such findings, save in most exceptional cases. But where a finding of fact is arrived at on the testimony of a witness of the character of Gadgil and the courts below depart from the rule of prudence that such testimony should not be accepted unless it is corroborated by some other evidence on the record, a finding of

that character in the circumstances of a particular case may well be reviewed even on special leave if the other circumstances in the ease require it, and substantial and grave injustice has result- ed. After fully examining the material on the record we have reached the conclusion that the courts below were in error in accepting the uncorroborated testimony of Gadgil to find the fact that he handed over the tenders to Nargund- kar on the 9th November, 1946. The witness was not allowed to live in a free atmosphere and was kept under police surveillance during the whole of the period of investigation and the trial and was rewarded with payment of his full salary after he had given evidence to the satisfaction of the prosecution. He is a person who felt no hesitation in deposing on oath that he willingly became a party to the forgery of Exhibit 13-27.

Assuming that the accused Nargundkar had taken the tenders to his house, the prosecution, in order to bring the guilt home to the accused, has yet to prove the other facts referred to above. No direct' evidence was adduced in proof of those facts. Reliance was placed by the prosecution and by the courts below on certain circumstances, and intrinsic evidence contained in the impugned document, Exhibit P-3A. In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspi- cion may take the place of legal proof and therefore it is right to recall the warning addressed by Baron Alderson to the jury in Reg v. Hodge (1) where he said :--

> "The mind was apt to take a pleasure in adapting circum- stances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to over- reach and mislead itself, to supply some little link that 'is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

It is well to remember that in cases where the evidence is of a circumstantial nature,the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so estab- lished should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In (1) (1838) 2 Lew. 227.

other words, there must be a chain of evidence so far com- plete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. In spite of the force- ful arguments addressed to us by the learned Advocate-Gener- al on behalf of the State we have not been able to discover any such evidence either intrinsic within Exhibit P-3A or ,outside and we are constrained to observe that the courts below have just fallen into the error against which warning was uttered by Baron Alderson in the above mentioned case. The trial magistrate was of the opinion that friendship between the two accused was of a very rapid growth and that their relations were very intimate and accused 2 was in a position to influence accused 1. He thus found that there was motive for the commission of the crime. The learned Sessions Judge disagreed with this finding and the High Court agreed with the Sessions Judge on this point. It observed that the evidence which

tended to prove friendship or undue favour was not such as to form the basis for a finding. It further found that there was nothing to show that the appellant Nargundkar received any illegal reward or the promise of one for showing Doongaji's tender to accused R.S. Patel. The first circumstance therefore on which the trial Judge placed considerable reliance was negatived by the court of appeal and in revision. It having been found that there was no motive whatsoever for accused Nargundkar to show the tenders to accused Patel and to take a substi- tuted tender from him, the main link in the chain of reason- ing of the trial court vanishes. Amiable relations between the two accused or their official relationship could not be regarded as sufficient motive for committing the crime of forgery.

The mainstay of the prosecution case is the intrinsic evidence of the contents of Exhibit P-3A itself which ac- cording to the courts below are unusual, peculiar and strange and which according to the Advocate General could not be there if it was a genune document. The argument would have force provided the prem- ises on which it is based are correct. Having examined the contents of Exhibit P-3A, we do not find anything very unusual or extraordinary in it which could not be there without its author having seen Exhibit P-6. We now proceed to examine the so-called peculiar features in Exhibit P-3A. In order to appreciate the points made by the learned Advocate-General it is necessary to set out certain facts. Exhibit P-9 is the notice calling for tenders for the supply of country spirit in the Seoni distillery area. The rates which were called for by this notice were as follows:

1. Flat rate for four years.

2. Rates on sliding scale for four years.

3. All-in-rate on the sliding scale for one year 1947-48.

4. Flat rates on the basis of the price of mahua flowers for three years 1948-51.

5. All-in-sliding scale rate on the basis of the price of mahua flowers for three years 1948-51.

The trial magistrate held on a construction of it that no rate or rates of separate years were asked for in this notice and that one flat rate was only asked for, for four years. Habibur Rahman and Zakirur Rahman in their tenders, Exhibits P-4 and P-5, quoted one flat rate for four years and did not mention separate flat rates for separate years. Doongaji in his tender, Exhibit P-6, mentioned separate flat rates for each separate year also. He did so because he consulted one Mr. Munshi, Personal Assistant to the Excise Commissioner, whether he should quote each rate separately and Mr. Munshi told him that he could give flat rate for the combined years as well as flat rates and also sliding scale rates for each year separately. Admittedly accused 2 was working as an agent of Habibur Rahman and his son Zakirur Rahman for the distillery contracts of Betul and Seoni, and, therefore, he must have been the author not only of his own tender but of the tenders submitted by Habibur Rahman and Zakirur Rahman, Exhibits P-4 and P-5. All of them were acting together with the object of getting the contract though they were submitting three separate tenders. The trial magistrate held that as Habibur Rahman and Zakirur Rahman gave one flat rate for four years as

called for by Exhibit P-9, but accused 2, the author of all these tenders, did not do it in Exhibit P-3A, but followed the method of Doongaji in giving the rates of each year separately as well as the rate for the combined four years. lie must have done so as he was shown the tender Exhibit P-S. The question arises whether the circumstance that the accused Patel and Habibur Rahrnan and Zakirur Rahman were acting together was such from which a necessary inference arises that the accused Patel must have been the author of all the three tenders and, if he were, that he could not have departed from the method adopted by him in preparing Exhibits P-4 and P-5 unless and until he had seen Exhibit P-6. We are clearly of the opinion that from the premises stated this inference does not necessarily follow. Doongaji even after reading Exhibit P-9, could not make up his mind whether to submit the tender with one flat rate for all the four years or whether to submit it by giving separate flat rates for each of the four years and made enquiry from the office of the Excise Commissioner and then quoted separate rates for each of the four years separately also. Patel who has admittedly considerable experience of distill- ery contracts and about the method of submitting tenders might very well have thought that it was best to quote a flat rate for all the years as well as a flat rate for each year separately. The circumstance that he did not do so in the other two tenders prepared by him does not materially advance the prosecution case. The very object of submitting several tenders on behalf of three persons acting in unison was to indicate to the excise authorities that they were being submitted by three different persons. If there were no variations whatsoever between those tenders that would have defeated the very purpose of submitting them. More- over, a variation of this trifling nature between Exhibits P-3A and P-4 and P-5 cannot be said to be of such an unusual or of such an extraordinary character as to warrant the inference that it could not have been made except without a look at the tender of Doongaji. The circumstance is of a neutral character and the trial magistrate and the learned Sessions Judge gave undue importance to it, being obsessed with the idea that such a quotation of flat rates for each year could not be mentioned in a tender by a contractor merely on a con- struction of Exhibit P-9 and without any further inquiry or without seeing the tender of somebody else who had followed that method.

The next circumstance on which considerable reliance is placed is that accused 2 studiously maintained rates below the rates of Doongaji throughout, that when Doongaji lowered his rates for the second year accused 2 did the same, and when Doongaji raised his rates for the third and fourth years accused 2 also did so, at the same time maintaining rates lower than Doongaji's rates. It is said that the system followed by Habibur Rahman and Zakirur Rahman and Patel originally must have been the same as Patel was the author of all the three tenders, that Habibur Rahman'srates were higher than Zakirur Rahman's by six pies and this variation was constant throughout, that in Patel's original tender which must have followed the same system his rates would be lower than Habibur Rahman's by three pies through- out. Exhibit P-3A, however, shows that this is not so. Patel abandoned the system when he found that his rates on his original scheme would be higher than the correspond- ing rates of Doongaji. Learned Advocate General contended that it was impossible for Patel unless he had seen Exhibit P-6, to quote rates of a large number of items numbering about 197, in every case lower than the rates given in Exhibit P-6 and the circumstance that in not a single case he has quoted a higher rate than Exhibit P-6 is conclusive of the fact that he had done so after he had seen Exhibit P-6. It was also said that there is no satisfactory explana- tion why Patel abandoned the scheme adopted by him in drawing up Exhibits P-4 and P-5 and his original tender. In our view, this circumstance again is not so strange or peculiar as was made out by the learned

Advocate-General or in the courts below. In the first place, there is no material whatsoever for the assumption that the so-called original tender was drawn up on the same scheme as Exhibits P-4 and P-5 or that there was a constant variation in rates between it and Habibur Rahman's tender. It has been assumed on mere surmise that the first five rates in the tender, Exhibit P-3A, are the rates that had been originally quoted. The original tender is not forthcoming and there is no evidence at all about its contents. Moreover, in the depo- sition of Doongaji it was elicited that in the year 1942 when tenders for the Seoni distillery contract were called for, the rates quoted by Ratanshah were lower than his rates for all items. He, however, voluntarily added that Ratanshah obtained his rates of the previous contracts before he submitted his tender for the year 1942 and that he had made a reduction of annas two to three in those rates but he was forced to admit that the rate of Ratanshah in the tender was not only lower than his but was also lower throughout than the rates of Laxminarain, Haji Ismail and Habibur Rahman even without seeing their tenders. From this statement it is quite clear that even without seeing the tenders of differ- ent tenderers a contractor may quote rock-bottom rates of all items on his own calculation or impelled by the desire of taking the contract anyhow. We do not follow why Patel could not do in 1946 what was done by Ratanshah in his tenders in 1942 and quote rates lower in all particulars and regarding all items than the rates of Doongaji. If a person is out to give rockbottom rates and his calculation is such that his rates work out lower than the rates of others, it may well be that he may quote lower rates in respect of all items.

It was then said that Patel had adopted a particular plan in submitting the three tenders, of himself, Habibur Rahman and Zakirur Rahman and that his plan was that his rates should be less by three pies than the rates he had quoted for Habibur Rahman, that in the first five items of Exhibit 145 he stuck to that plan and did not alter the rates of those items as originally submit- ted by him, as those rates were lower than the rates of Doongaji but from the sixth item onwards he substituted new rates for the ones he had originally submitted and he de- parted from the plan so that his rates for each item were to be lower only by three pies as compared with the rates of Habibur Rahman. It is no doubt true that Patel did not adhere to the plan that he adopted in the first five items of his tender but is that a circumstance from which any inference can be drawn that the first five items are a part of his original tender or that he did so depart from them because he had seen Exhibit P-6 and he wanted to underbid Doongaji. As we have already said, the object of submitting three separate tenders ostensibly by persons who were acting together was to secure the contract in one or the other name and Patel who was the author of all the three documents may very well in his own document have quoted much lower figures than were quoted by Habibur Rahman and Zakirur Rahman, in order also to give the impression that all these tenders had not been submitted by one and the same person. Be that as it may, a closer examination of the tenders of Doongaji and Patel completely negatives the theory of the courts below. The rates quoted in the first five items of Exhibit P-145 are lower than the rates of Doongaji by 102, 69, 18, 12 and 9 pies respectively. Even in the subsequent quotations except in one case where the disparity in the tales of Doongaji and Patel is only two pies, the disparity in the rates is from 9 to 11 pies. Patel is certainly a businessman and the whole object of quoting the rates was to earn the maximum profit. If he had seen the tender of Doongaji he would have modelled the rates in a manner that would give him the highest profit. The learned Advocate- General could not suggest any reason whatsoever why Patel would maintain his quotation for the quantity of 50,000 gallons at Rs, 2-10-6 when the rate of Doongaji was Rs. 3-3-0

He could easily raise the quotation to Rs. 3 and similarly in all other cases he could have underbid Doongaji by 2, 3 or 6 pies at the most. He need not have maintained a dis- parity of 9 to 11 pies between his rates and the rates of Doongaji. In our opinion, therefore, no conclusion of any character could be drawn from the disparity in the rates of Doongaji or of Patel or of the expected uniformity in the rates of Habibur Rahman or of R.S. Patel which would estab- lish that Exhibit P-3A had been prepared by having a look at Exhibit P-6.

Another circumstance on which reliance was placed was that certain rates in Exhibit P-3A are lower than the corre- sponding rates in Exhibit P-6 by only one or two pies. There is no doubt that one or two rates are lower by two pies than the rates in Exhibit P-6 but nothing follows from that innocent circumstance, unless one starts with a pre- sumption of guilt. Once it is assumed that the tender of Doongaji was shown to Patel, all these circumstances might to some extent fit in with the view that in certain respects it may have been copied from Exhibit P-6. The courts below fell into this error and departed from the rule that in a criminal case an accused person is to be presumed to be innocent and that it is for the prosecution to establish his guilt conclusively.

Next it was urged that in the covering letter Exhibit P-3 sent by Patel he mentions three appendices numbered 1, 2 and 3, The same expression finds place in the covering letter Exhibit P-4 of Habibur Rahman and Exhibit P~5 of Zakirur Rahman, that appendices 1 to a of the tender of Habibur Rahman and Zakirur Rahman correctly answer to the reference in the covering letters but this is not so in Patel's case; on the other hand, instead of appendix 1, Patel has appendix 1 (a) and 1 (b) and the number of his appendices thus goes up to four and this departure from Exhibits P-4 and P-5 came about because of his having seen Exhibit P-6 and the number of appendices annexed to it. It was urged that the original tender of Patel must have contained three appendices like those of Habibur Rahman and Zakirur Rahman and not appendix l(a) and l(b) as now found and that this circumstance showed substitution of the 'tender. The learned magistrate, in our opinion, in giving importance to this circumstance mislead himself completely. In the first place, it is not accurate to say that the expression appendices 1, 2 and 3 was common to the covering letters Exhibts P-4 and P-5. In Exhibit P-5 the appen- dices are marked A, B and C. Therefore, no uniform method was adopted by Patel in marking the appendices to the ten- ders, Exhibits P-4 and P-5. Secondly, there is no conflict in the expression of the appendices of Habibur Rahman and Patel. They have been marked as 1, 2 and 3 and a mere subdi- vision of the first appendix into (a) and (b) could not be taken to be a departure from the method adopted in the description of the appendices. It may further be observed that the covering letter signed by Patel mentions four appendices, while the covering letters of Habibur and Zaki- rur Rahman only mention three appendices. The trial magis- trate as well as the Sessions Judge ignored all these dif- ferences in the method of the description of the appendices and assumed that they had been uniformly described. The result therefore is that all these so-called peculiar features found by the courts below in Exhibit P-3A should be eliminated from consideration and it must be held that there are really no circumstances inconsistent with Exhibit P- 3A being a genuine document. It could have been made out without looking at Exhibit P-6. In this view of the case the whole basis on which the judgments of the courts below are founded vanishes, and in the absence of any evidence of motive, we are of the opinion that the facts did not on any just or legal view of them warrant a conviction, and al- though the proceedings are taken to have been unobjection- able in form, justice has gravely and injuriously miscar- ried. We therefore

set aside the conviction of both the appellants on the second charge and acquit them, In order to appreciate the third charge, it is necessary to set out the terms of Exhibit P-24 which it is said was antedated in order to create evidence for the defence of the accused and to injure Amarnath. It is in these terms:

> Congress Nagar, Nagpur, 20th November, 1946.
>
> The Commissioner of Excise, C.P. & Berar, Nagpur. Dear Sir, I beg to submit few of my complaints for such action as you may be pleased to take, which are as under. I went to see Mr. Amarnath last week, at his residence in connection with Seoni Distillery work. I saw Mr. Edulji and his partner with Mr. Amarnath in the office room of his residence with some office files. From the papers I could recognize my tender open on the table in front of them. As soon as I went there, all of them were astonished and they could not speak with me for a moment, and then they carried on some dry general conversation with me. Same way after about a week, when I went to Seoni for mahua bill, when Mr. Amarnath visited for sanctioning the advance, I had the opportunity to see Mr. Amarnath in dak bungalow at about 9-30 p.m. when I saw Mr. Mehta the ex- manager of Mr. Edulji (who is also the manager of Seoni Electric Co.) with Mr. Amarnath near table with the same file of the tender. No doubt after seeing the above two incidents I requested Mr. Amarnath to be fair in this af- fair.
>
> I am bringing these incidents to your notice, as I fear that something underhand may not be going on, and I am afraid that my tender may be tampered with.
>
> Hoping to get justice, Yours faithfully, Sd. R.S. Patel."
>
> The words "Congress Nagar, Nagpur, 20th November, 1946"
>
> are in manuscript, while the rest of the letter has been typed. The digit 6 of the year 1946 has been over-written on digit 7 written in continental style and it is apparent to the naked eye that originally the writer wrote 7 and subsequently changed it to 6. It was contended by the learned Advocate General,--and this is the finding of the courts below, --that this letter was written some time during the investigation of the case in July or August 1947, and was antedated in order to implicate Amarnath and to use it as evidence in defence. The point for decision is wheth- er there is any evidence whatsoever to establish this act. We have not been able to discover any such evidence on the record; on the other hand the intrinsic evidence in the letter proves that most likely it came into existence on the date it bears. The relevant facts are that the tenders were opened by accused Nargundkar on the 11th November, 1946, he handed them over after making the endorsements to Amarnath and Amarnath had to submit a report about them. It is alleged in this letter that "last week", i.e., during the week commencing on the 11th November, 1946, accused Patel went to see Amarnath and there he saw Edulji Doongaji with him with his tender open on his table in front of him and that he was astonished at it, that about a week later he again went to Seoni

and had the opportunity to see Amarnath and Mr. Mehta, ex-manager of Edulji Doongaji, was with him and the tender file was lying there. It was stated that he had requested Amarnath to be fair in this affair and the Commissioner was asked that he should see that his tender was not tampered with and he got justice. The whole purpose and object of this letter was to protect himself against any underhand dealing in the granting of the contract. In his statement under section 342, Cr. P.C., Patel said that he saw Amarnath on the morning of the 15th or 16th November, 1946, and he met Amarnath at Seoni at the distillery prem- ises on the 16th November, 1946, and on the same day he met him at about 9 p.m. at the Seoni dak bungalow and that he again met him on the 17th November, at 10 a.m. He also stated that he had gone to see Amarnath at his resi- dence at Nagpur between the dates 12th and 18th November. It was contended by the learned Advocate-General that his statement was inconsistent with the recitals contained in Exhibit P-24. We see nothing inconsistent between this statement and the recitals. If accused Patel saw Amarnath on the 12th, the letter having been written on the 20th November, it would be quite a correct thing to say that he saw him "last week" and the next recital when he said that about a week thereafter he saw him again is quite consistent with his going and seeing him on the 16th or 17th November. That would be about a week after the first visit. To draw any conclusion adverse to the accused from a slight inaccu- racy in the description of dates and to conclude therefrom that it was established that the accused Patel had seen Amarnath on the 9th November, 1946, amounts to unnecessari- ly stretching a point against the accused. The recitals in the letter, true or false, are quite consistent with the letter bearing date 20th November, 1946. The magistrate observed that the vagueness about the date and the week shows that the allegations therein are not correct. We have not been able to understand how -the vagueness about the date could lead to the conclusion arrived at. Emphasis was laid on the overwriting of the figure 6 over the figure 7 in the manuscript part of the letter. It was said that the normal experience is that it becomes a subconscious habit to automatically write the year correctly when several months have elapsed after the change of the year and that by sheer force of habit the correct year must have been put down when the date was entered in the letter Exhibit P-24 and that the figure was subsequently changed to 6 and this fact was an indication that the letter was written some time in the year 1947. In our view this argument again involves an element of conjecture. The mistake may well have been inadvertent- ly made and the correction made there and then. That such mistakes are not very uncommon or unusual and occur in official documents is fully established on the record, in para 93 of the judgment of the learned Sessions Judge and it is said as follows:

"The appellants have produced a file which is Exhibit ID-35. It contains a sheet which bears pages 9 and 10. On the 10th page there are two office notes-one is written by A.M. Naidu and the other by the appellant Nargundkar. A.M. Naidu below his signature has written '6-4-1948'. The appellant Nargundkar below his signature has written '6-4- 1947'. The other notes in the office file show that the correct date of the two signatures was 6th August, 1947. Thus in this sheet there are two mistakes in

> mentioning the number of the month and one mistake in mentioning the number of the year. The appellants contend that such mistakes are possible. Nobody can deny that such mistakes are possible; but it has to be decided what inferences can be drawn from such mistakes, if there is other evidence also."

We have looked in vain for other evidence to prove that the letter was not written on 'the date it bears. Even Gadgil could not explain why he said that the letter was written in July, 1946. It is clear that he is not telling the' truth in this respect. The endorsement made on the letter by accused Nargundkar clearly bears the date 21st November, 1946, and if this letter was not given to him on the date of the endorsement and was given to him several months afterwards he would in ordinary course have made some note either on the letter or in the receipt register of his office when that letter was received by him. Then it was said that this letter was not in the file of the tenders which were kept separate. The Commissioner had noted that the letter be filed and he sent it to the office. If the office people did not put it in the file, from that circum- stance no adverse inference could be drawn as to the date that the letter bears. It is dear that no forger would have in such a clumsy manner corrected 1947 into 1946 so as to leave the original figure "7" intact and thus leave evidence of its suspicious character writ large on its face. There was no hurry about it, and a second letter without the alteration could easily have been typed.

Next it was argued that the letter was not typed on the office typewriter that was in those days, viz., article B, and that it had been typed on the typewriter article A which did not reach Nagpur till the end of 1946. On this point evidence of certain experts was led. The High Court rightly held that opinion of such experts was not admissible under the Indian Evidence Act as they did not fall within the ambit of section 45 of the Act. This view of the High Court was not contested before us. It is curious that the learned Judge in the High Court, though he held that the evidence of the experts was inadmissible, proceeded nevertheless to discuss it and placed some reliance on it. The trial magis- trate and the learned Sessions Judge used this evidence to arrive at the finding that, as the letter was typed on article A which had not reached Nagpur till the end of December, 1946, obviously the letter was antedated. Their conclusion based on inadmissible evidence has therefore to be ignored.

It was further held that the evidence of experts was corroborated by the statements of the accused recorded under section 342. The accused Patel, when questioned about this letter, made the following statement:

> "Exhibit P-31 was typed on the office typewriter article B. Exhibit P-24 being my personal complaint letter was typed by my Personal Assistant on one of the typewriters which were brought in the same office for trial, with a view to purchase. As this was my personal complaint no copy of it was kept in the Correspondence Files Exhibit P-34 and Exhib- it P-35 just as there is no copy in these files of my tender Exhibit P- 3A ..... In the month of September, October and November, 194t5, several machines were brought for trial from various parties in our of-rice till the typewrit- er article A was purchased by National Industrial Alcohol Ltd. Company."

If the evidence of the experts is eliminated, there is no material for holding that Exhibit P-24 was typed on article A. The trial magistrate and the learned Sessions Judge used part of the statement of the accused for arriving at the conclusion that the letter not having been typed on article B must necessarily have been typed on article A. Such use of the statement of the accused was wholly unwar- ranted. It is settled law that an admission made by a person whether amounting to a confession or not cannot be split up and part of it used against him. An admission must be used either as a whole or not at all. If the statement of the accused is used as a whole, it completely demolishes the prosecution case and, if it is not used at all, then there remains no material on the record from which any inference could be drawn that the letter was not writeen on the date it bears.

For the reasons given above we hold that there is no evidence whatsoever on the record to prove that this letter Exhibit P-24 was antedated and that being so, the charge in respect of forgery of this letter also fails. Read as a whole, this letter cannot be said to have been written with the intention of causing any injury to Amarnath or for the purpose of creating a defence in respect of the second charge. The letter read as a whole is an innocuous document and its dominant purpose and intent was to safeguard the interests of accused Patel and to protect him against any underhand or unfair act of his rival contractors. We cannot infer any intent to defraud or any intention to injure Amarnath, though in order to protect himself accused Patel made certain allegations against him. We therefore set aside the conviction of both the appellants under the third charge and acquit them.

The result is that the consolidated appeal is allowed, the judgments of all the three courts below are set aside and the appellants are acquitted.

Appellants acquitted.

Agent for the appellant in Criminal Appeal No. 56 of 1951: Ganpat Rai.

Agent for the appellant in Criminal Appeal No. S7 of 1951: Rajinder Narain.

Agent for the respondent: P.A. Mehta.