Supreme Court of India
Topandas vs The State Of Bombay on 14 October, 1955
Equivalent citations: 1956 AIR 33, 1955 SCR (5) 881
Author: N H Bhagwati
Bench: Bhagwati, Natwarlal H.

PETITIONER:
TOPANDAS

Vs.

RESPONDENT:
THE STATE OF BOMBAY.

DATE OF JUDGMENT:
14/10/1955

BENCH:
BHAGWATI, NATWARLAL H.
BENCH:
BHAGWATI, NATWARLAL H.
AIYYAR, T.L. VENKATARAMA
SINHA, BHUVNESHWAR P.

CITATION:
1956 AIR 33 1955 SCR (5) 881

ACT:
Indian Penal Code (Act XLV of 1860), ss. 120-A, 120-B-Criminal conspiracy-Two or more persons must be parties thereto-One person alone cannot be held guilty-If other alleged co-conspirators are acquitted of the charge.

HEADNOTE:
According to the definition of criminal conspiracy in s. 120-A' of the Indian Penal Code two or more persons must be patties, to such an agreement and one person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself.
Where, therefore, 4 named individuals as in the present case eye charged with having committed an offence under s. 120-.B. I.P.C. and three out of those four were acquitted of the charge, the fourth accused could not be held guilty of the offence of criminal conspiracy.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 42 of 1955.

On Appeal by Special leave from the Judgment and Order dated the 8th October 1954 of the Bombay High Court in Criminal Appeal No. 315 of 1954 arising out of the Judgment and Order dated the 6th January 1954 of the Court of the 4th Presidency Magistrate, Bombay in Cases Nos. 639-40/P-1955. H. J. Umrigar, J. B. Dadachanji and Rajinder Narain for the appellant.

Porus A. Mehta and P. G. Gokhale for the respondent. 1955. October 14. The Judgment of the Court was delivered by BHAGWATI J.-The accused No. 1, the Appellant before us, and accused Nos. 2, 3 and 4 were charged that they, at Bombay, between about June 1950 and November 1950, were parties to a criminal conspiracy by agreeing to do certain illegal acts, to wit: Firstly, that they used as genuine forged bills of entry which included bills of entry Exhibit Z; Secondly, that they

-,heated the Deputy Chief Controller of Imports, Bombay, by fraudulently I and dishonestly inducing him to deliver to the firm of J. Sobhraj & Co., an import licence bearing No. 248189/48 to import cycles from United Kingdom of the value of Rs. 1,98,960; Thirdly, that they cheated the Deputy Chief Controller of Imports, Bombay, by falsely and dishonestly inducing him to deliver to the firm of J. Sobhraj & Co., an import licence bearing No. 203056/48 to import watches from Switzerland of the value of Rs. 3,45,325; and Fourthly, that they cheated the Deputy Chief Controller of Imports, Bombay, by fraudulently and dishonestly inducing him to deliver to the firm of J. Sobhraj & Co., an import licence bearing No. 250288/48 to import artificial silk piece goods from Switzerland of the value of Rs. 12,11,829; and the above said illegal acts were done in pursuance of the said agreement and that they thereby committed an offence punishable under section 120-B of the Indian Penal Code. There were also charges against all the accused under section 471 read with section 465 and section 34 and also under section 420 read with section 34 of the Indian Penal Code in respect of each of the three illegal acts aforesaid. The learned Presidency Magistrate, 23rd Court, Esplanade, Bombay, tried all the accused for the said offences and acquitted all of them. The State of Bombay thereupon took an appeal to the High Court of Judicature at Bombay, and the High Court reversed the acquittal of accused No. I and held him guilty of all the offences with which he had been charged including the offence under section 120-B of the Indian Penal Code. The acquittal of accused 2, 3 and 4 was confirmed.

The High Court, even though it acquitted accused 2) 3 and 4 of the charge under section 120-B of the Indian Penal Code, was of the opinion that the deed of assignment put forward by the accused No. I in his defence was a false and fabricated document and the ,said document along with its accompaniments was forged or was got forged by or with the knowledge or connivance of the accused No. 1 and his co-conspirators and it was impossible to believe that this conspiracy carried out with such meticulous care could be the work of only accused No. 1. There was no evidence on the record to warrant any inference that the accused No. I was acting in the matter in collaboration with any other 'co-conspirators and the only evidence was in regard to the various acts alleged to have been done by accused 2, 3 and 4 in the matter of the conspiracy and the furtherance of the objects thereof While considering the question of sentence to be passed on the accused No. 1 who, in spite of the circumstances aforesaid, was convicted of the offence under section 120-B of the Indian Penal Code, the High Court observed that "the conspirators, whoever they were, had shown considerable ingenuity and daring in carrying out the object of the conspiracy and that it felt no hesitation in Coming to the conclusion that it was not straitened circumstances or financial difficulties which

were the basis of the conspiracy but it was the greed for money on such a large scale as could never be regarded as an extenuating circumstance". It, therefore, directed that the accused No. I should undergo rigorous imprisonment for 18 months for the offence under section 120-B of the Indian Penal Code. The application for leave to appeal to this Court filed by accused No. 1 was rejected by the High Court. The accused No. 1 thereupon applied for and obtained special leave to appeal against the decision of the High Court. The special leave was, however, limited to the question of law, whether the conviction under section 120-B is maintainable in view of the fact that the other alleged conspirators had been acquitted.

The charge as framed under section 120-B of the Indian Penal Code was levelled against 4 named individuals, the accused Nos. 1) 2, 3 and 4. It was not a charge against them and other persons unknown with the result that if accused 2, 3 and 4 were acquitted of that charge, there remained only accused No. 1 and the question, therefore, arises for our consideration whether, under the circumstances, the accused No. I could be convicted of the offence under section 120-B of the Indian Penal Code.

Criminal conspiracy has been defined in section 120-A of the Indian Penal Code:-"When two or more persons agree to do or cause to be done (i) an illegal act, or (ii) an act which is, not illegal by illegal means, such an agreement is designated a criminal conspiracy". By the terms of the definition itself there ought to be two or more persons who must be parties to such an agreement and it is trite to say that one person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself. If, therefore, 4 named individuals were charged with having committed the offence under section 120- B of the Indian Penal Code, and if three out of these 4 were acquitted of the charge, the remaining accused, who was the accused No. 1 in the case before us, could never be held guilty of the offence of criminal conspiracy. If authority for the above proposition were needed, it is to be found in Archbold's Criminal Pleading, Evidence and Practice, 33rd edition, page 201, paragraph 361:- "Where several prisoners are included in the same indictment, the jury may find one guilty and acquit the others, and vice versa. But if several are indicted for a riot, and the jury acquit all but two, they must acquit those two also, unless it is charged in the indictment, and proved, that they committed the riot together with some other person not tried upon that indictment. 2 Hawk. c. 47. s. 8. And, if upon an indictment for a conspiracy, the jury acquit all the prisoners but one, they must acquit that one also, unless it is charged in the indictment, and proved, that he conspired with some other person not tried upon that indictment. 2 Hawk. c. 47. s. 8; 3 Chit. Cr. L., (2nd ed.) 1141; R. v. Thompson, 16 Q.B.D. 832; R. v. Manning, 12. Q.B.D. 241; R. v. Plummer [1902] 2 K.B. 339". The King v. Plummer ([1902] 2 K.B. 339) which is cited in support of this proposition was a case in which, on a trial of indictment charging three persona jointly with conspiring together, one person had pleaded guilty and a judgment passed against him, and the other two were acquitted. It was held -that the judgment passed against one who had pleaded guilty was bad and could not stand. Lord Justice Wright observed at page 343:- "There is much authority to the effect that, if the appellant had pleaded not guilty to the charge of conspiracy, and the trial of all three defendants together had proceeded on that charge, and had resulted in the conviction of the appellant and the acquittal of the only alleged co-conspirators, no judgment could have been passed on the appellant, because the verdict must have been regarded as repugnant in finding that there was a criminal agreement. between the

appellant and the others and none between them and him: see Harrison v. Errington (Popham,

202), where upon an indictment of three for riot two were found not guilty and one guilty, and upon error brought it was held a "void verdict", and said to be "like to the case in 11 Hen. 4, c. 2, conspiracy against two, and only one of them is found guilty, it is void, for one alone cannot conspire"."

Lord Justice Bruce at page 347 quoted with approval the statement in the Chitty's Criminal Law, 2nd ed., Vol. III, page 1141:-

"And it is holden that if all the defendants mentioned in the indictment, except one, are acquitted, and it is not stated as a conspiracy with certain persons unknown, the conviction of the single defendant will be invalid, and no judgment can be passed upon him".

The following observations made by Lord Justice Bruce are apposite in the context before us:-

"The point of the passage turns upon the circumstance that the defendants are included in the same indictment, and I think it logically follows from the nature of the offence of conspiracy that, where two or more persons are charged in the same indictment with conspiracy with another, and the indictment contains no charge of their conspiring with other persons not named in the indictment, then, if all but one of the persons named in the indictment are acquitted, no valid judgment can be passed upon the one remaining person, whether he has been convicted by the verdict of a jury or upon his own confession, because, as the record of conviction can only be made up in the terms of the indictment, it would be inconsistent and contradictory and so bad on its face. The gist of the crime of conspiracy is that two or more persons did combine, confederate, and agree together to carry out the object of the conspiracy". This position has also been accepted in India. In Gulab Singh v. The Emperor (A.I.R. 1916 All. 141) Justice Knox followed the case of The King v. Plummer, supra, and held that "it is necessary in a prosecution for conspiracy to prove that there were two or more persons agreeing for the purpose of conspiracy" and that "there could not be a conspiracy of one".

To similar effect was the judgment in King-Emperor v. Osman Sardar (A.I.R. 1924 Cal. 809) where Chief Justice Sanderson observed that "the gist of an offence under section 120-B was an alleged agreement between the two accused and when the jury found that one of them was not a party to the agreement and acquitted him of that charge, it followed as a matter of course that the other accused could not be convicted of that charge. The assent of both of them was necessary to constitute the agreement which was the basis of the charge".

Ratanlal in his Law of Crimes, 18th ed., page 270, has summarised the position as it emerges from the above two cases in the manner following:-

"Where, therefore, three persons were charged with having entered into a conspiracy, and two of them were acquitted, the third person could not be convicted of conspiracy whether the conviction be upon the verdict of a jury or upon his own confession".

The position in law is, therefore, clear that on the charge as it was framed against the accused Nos. 1, 2 3 and 4 in this case, the accused No. I could not be convicted of the offence under section 120-B of the Indian Penal Code when his alleged co-conspirators accused 2, 3 and 4 were acquitted of that offence.

In our opinion, therefore, the conviction of the accused No. I of the charge under section 120-B of the Indian Penal Code was clearly illegal. The appeal of the accused No. 1 will, therefore, be allowed to the extent that his conviction under section 120-B of the Indian Penal Code and the sentence of rigorous imprisonment of 18 months awarded to him as the result thereof would be quashed. We are not concerned here with the conviction of the accused No I of the offences under section 471 read with section 465 and also his conviction for each of the three offences under section 420 of the Indian Penal Code and the concurrent sentences of rigorous imprisonment for one year in respect of each of them passed by the lower Courts upon him in regard to the same. These convictions and sentences will of course stand.