Supreme Court of India
M. G. Agarwal vs State Of Maharashtra on 24 April, 1962
Equivalent citations: 1963 AIR 200, 1963 SCR (2) 405
Author: P Gajendragadkar
Bench: Sinha, Bhuvneshwar P.(Cj), Gajendragadkar, P.B., Wanchoo, K.N., Ayyangar, N. Rajagopala, Aiyyar, T.L. Venkatarama

PETITIONER:
M. G. AGARWAL

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT:
24/04/1962

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
AIYYAR, T.L. VENKATARAMA
SINHA, BHUVNESHWAR P.(CJ)
WANCHOO, K.N.
AYYANGAR, N. RAJAGOPALA

CITATION:
1963 AIR 200 1963 SCR (2) 405
CITATOR INFO :
R 1966 SC1775 (4)
REI 1972 SC2020 (7)
R 1973 SC 264 (4)
R 1973 SC1204 (9)
RF 1976 SC1750 (3)
R 1984 SC1622 (156,161)

ACT:
Appeal Against Acquittal-Presumption of innocence- Power of High Court-Conviction, when can be based on circumstantial evidence-Code, of Criminal Procedure. 1898 (Act V Of 1898), s. 423 (1) (a), Indian Penal Code, 1860 (Act XLV of 1860), s.120B.

HEADNOTE:
Appellant Agarwal was an Income Tax Officer and appellant Kulkarni, a clerk under him. They were put up for trial along with another clerk of the Department on several charge the principal charge being that they had entered into a criminal conspiracy to obtain for themselves pecuniary

advantage in the form of income-tax refund orders in the name of fictitious persons and had thereby fraudulently mis-appropriated a large amount of Government money. The trial judge held that the prosecution had failed to establish criminal conspiracy and acquitted the appellants of the charge under s. 120B and the second appellant of all other charges under the Indian Penal (ode but while acquitting the third person also under s. 120B,, convicted him of other offends as he had pleaded guilty. The State appealed against this order of acquittal. The High Court allowed the appeal in part and convicted all the accused persons under s. 120B of the Code and the second appellant also under the other charges.

Held, that there was no doubt that the powers of the High Court under s. 423 (1) (a) of the Code of Criminal Procedure in dealing with an order of acquittal were as wide as those under s. 423 (1) (b) in respect of orders of conviction;' but in dealing with an appeal against acquittal that Court had to bear in mind the fact that the initial presumption of innocence in favour of the accused person is strengthened by the order of acquittal; But however cautious or circumspect the court might be, it was, nevertheless, free to arrive at its own conclusions as to the guilt or innocence of the accused on the evidence adduced before it by the prosecution;

Sheo Swarup v. King Emperor , 934) L. R. 61 I. A. 398 and Nur Mohammad v. Emperor, A.I.R. 1945 P. C. 151., referred to.

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Observations made on' this point in certain decided cases of this Court were not intended to lay down a rigid or inflexible rule that should govern all such appeals and it is not necessary that the High Court must characterise the findings as perverse, before it can reverse a judgment of acquittal.

Surajpal Singh v. The State, [1952] S.C.R. 193 and Ajmer Singh v. State, of Punjab, [1953] S.C.R. 418, considered.

Sanwat Singh v, State of Rajasthan, [1961] 3 S.C.R. 120 and Harbans Singh v. State of Punjab, [1962]_"Supp. 1 S. C. R. 104 referred to.

It was settled law that a conviction can be reasonably founded on circumstantial evidence if it is wholly inconsistent with the innocence of the accused and Consistent only with his guilt. If the circumstances proved are consistent either with innocence or guilt, the accused person is entitled to the benefit of doubt. But in applying this principle a distinction must be made between primary facts' which have to be proved in the ordinary way and the inference of guilt to be drawn therefrom. It is in connection with the latter aspect of the problem that the doctrine of benefit of doubt can apply ;-and an inference of guilt can be drawn only if the proved facts are wholly inconsistent with innocence, and consistent only with guilt.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Criminal Appeals Nos. 176 of 1959 and 40 of 1960.

Appeals by special leave from the judgment and order dated August 26, 1959, of the Bombay High Court, in Cr. A. No. 1638 of 1958.

A. S. R. Chari, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the appellant (in Cr. A. No. 176 of

59).

Erenny Parekh and K. R. Choudhri, for the appellant (in Cr. A. No. 40 of 60).

Jai Gopal Sethi, R. L. Mehta and R. H. Dhebar, for the respondents.

1962. April 24. The Judgment of the Court was delivered by GAJENDRAGADKAR, J.-A criminal conspirac. to which, according to the prosecution, M.G. Agarwal M. K. Kulkarni and N. Laxminarayan, hereafter called accused Nos. 1, 2 and 3 respectively, were parties between December, 1954, and June 1955, at Bombay, has given rise to the criminal proceedings from which the two present appeals arise. At the relevant time, the three accused persons were attached to the office of the Income-tax Officer, Ward No. A-III in Greater Bombay. Accused No. I was designated as the First Income-tax Officer, and accused Nos. 2 and 3 worked under him as second and third Assessment Clerks respectively. The main charge against these persons was that during the relevant period, they had entered into a criminal conspiracy by agreeing to do or cause to be done illegal acts, by corrupt and illegal means and by abusing their position as public servants to obtain for themselves pecuniary advantage in the form of income-tax refund orders and this criminal object was achieved by issuing the said refund orders in the names of persons who either did not exist or were not assessees entitled to such refunds. The prosecution case was that after the said refund orders were thus fraudulently issued, they were fraudulently cashed and illegally misappropriates. The ten persons in whose names these refund orders were fraudulently issued were G.M. Thomas, P.N. Swamy, K. S. Patel, S. R. Bhandarkar, S. P. Jani, D. M. Joshi, C. B. Kharkar, Ramnath Gupta, V. M. Desai and K. V. Rao. It appears that twenty-five bogus vouchers were issued in respect of these ten fictitious cases ; eleven accounts were fraudulently opened in different Banks in Bombay and misappropriation to-the extent of Es. 54,000/- has thereby been committed. That, in. substance, is the main charge which was levelled against the three accused persons.

Nine other subsidiary charges were also framed against them. Charges 2, 3 and 4 wore in respect of the income-tax refund order issued on the 7th January, 1955, in favour of Mr. G. M. Thomas. The prosecution alleged that by their several acts in respect of the issuance of this refund order, the three accused persons had committed offences under sections 467 and 471 read with, s. 34 I.P.C., as well as section 5(2) of the Prevention of Corruption Act read with s. 5(1)(d) of the said Act and a. 34 of

'the Indian Penal Code. Similarly, charges 5, 6, and 7 were framed under the same sections respectively in regard to the income-tax refund order issued in favour of Mr. G. M. Thomas on the 2nd April, 1955. In regard to the income-tax refund order issued in favour of Mr. S. R. Bhandarkar on 2nd April, 1955, charges, 8, 9 and 10 were framed under the said respective, sections. That is how the case against the three, accused persons under ten charges was tried by the Special Judge , Greater Bombay.

It would thus be seen that, in substance, the prosecution case if; that in order to carry out the criminal object of the conspiracy, the three accused, persons adopted a very clever and ingenious modus operandi in defrauding the public treasury. They" decided to take adequate steps to issue income-tax refund orders in the names of non-existing persons and to misappropriate the amounts by encashing the said refund certificates issued in pursuance of the said refund orders. In furtherance of the conspiracy and in furtherance of the common intention of all the conspirators, steps were taken to forge the signatures of the said fictitious persons as claimants wherever necessary, to prepare some of the supporting documents and to deal with the cases as though they were cases of genuine assessees submitting a return and making a claim for refund. It is by adopting this clever device that all the accused persons have succeeded in misappropriating such a large amount as Re. 54,000/-.

It appears that when a return 'or refund application is received in the Income-tax Office, first goes to the assessment refund clerk who, in ue course, puts it up for orders before the Incometax Officer. In ordinary course, the Income-tax Officer sends a notice to the assessee, examines him and the accounts produced by him to see if the return is correct. That done, an assessment order is passed by the Income-tax Officer. Thereafter, a form known as I.T. 30 form is prepared. This form contains several columns which, when filled in, give details about the income-tax payable by the assessee the tax paid by him, the refund ordered by the income-tax Officer or the collection demanded by aim. After this form is duly filled, it is sent to another clerk for preparing the refund order. At that stage, the refund order is prepared and the said order together with the demand and collection register and I.T. form 30 are sent back to the Income-tax Officer who examines the record and signs the refund order and the I.T. form 30 and himself makes or causes to be made an entry in the demand and collection register. At this time, he also cancels the refund certificates, such as dividend warrants. The Income-tax Officer also receives the advice memo prepared by the refund clerk and signs it. The said memo is sent to the Reserve Bank and the refund order is sent to the assessee. After the refund voucher is cashed by the Reserve Bank, the advice memo is received back in the Income-tax Office. It is thereafter that an entry is made in the Daily Refund Register. The prosecution case is that the conspirators purported to adopt all steps which they deemed necessary to carry out their criminal object in order formally to comply with the procedure prescribed by the department in making refund orders.

At this stage, it is relevant to state briefly how, according to the prosecution, the fraud of the conspirators was discovered. In April' 1955, Mr. Sundararajan who was then the Commissioner of Income-tax, Bombay City received a report that many irregularities were being committed in respect of refund orders issued by A-III Ward. On receiving this report, he told Mr. Gharpure who was the Inspecting Assistant Commissioner of Income-tax, A- Range, to carry out an inspection of the work

of accused No.

1. He, however, cautioned Mr. Gharpure to carry out his assignment as if he was making an inspection in the normal course in order that no suspicion should arise in the mind of accused No. 1. Mr. Gharpure accordingly made inspection and submitted his report on the 6th ,Tune, 1955. It is common ground that Mr. Gharpure was not able to discover any fraud.

On the 10th June, 1955, Mr. Sundararajan asked Mr. Gharpure to produce before him all the refund books kept in A-III Ward. They were accordingly produced before him. On examining these books, Mr. Sundararajan found certain sus- picious features. He came across one counter-foil of the refund order in the Dame of G. M. Thomas and he noticed that the relevant postal acknowledgment did not bear any postal stamp and presented a clean and fresh appearance. That appeared to Mr. Sundararajan to be suspicious. He also found that a number of refunds were made in round figures which was very unusual. The files showed that on the back of the counter-foils the postal acknowledgments were not stuck up nor were advice notes stuck up. His suspicions having been raised by these unusual features of the files, Mr. Sundararajan conducted a further scrutiny of the six counter-foil books particularly to find out whether the refund orders were in respect of round figures and he found that such refund orders had been passed, in the names of Messrs G. M. Thomas, K. S. Patel, P. N. Swamy, D. N. Joshi and S, R. Bhandarkar.

After the refund orders were encashed they we're sent to the Accountant-General's Office by the Reserve Bank and so, Mr. Sundararajan thought that he could got them from the said office. All this happened in the evening of the 10th June, 1955.

On the 11th June, 1955, which was a Saturday, Mr. Sundararajan called for the income-tax files of some of the persons named above including G. M. Thomas and K. S. Patel along with the files of twenty other regular assessees. The files of the twenty regular assessees were submitted to him but not of the ten fictitious persons. On enquiry he was told that those files were not available. ' The non- production of the said files confirmed his suspicion that something irregular must have happened in respect of them. That is why he sent for accused No. 1 at 2 p. m. but he was not in his office. He came at 3 p. m. Mr. Sundararajan showed him the relevant counter-foils and examined him. The statement made by accused No. I was duly recorded by Mr. Sundararajan. As a result of the enquiry made by him, Mr. Sundararajan was satisfied that the three accused persons had fraudulently brought into existence several documents as a result of which a large amount had been misappropriated, and so, he requested the Central Board of Revenue to suspend accused No. 1.

At that stage, Mr. Sundararajan naturally wanted to search the office of A-III Ward, but he could not carry out the search since he was told that the key of the A-III Ward Office had been taken way by accused No. 3. He then left instructions with the police guard of his office that nobody should be allowed to enter the room of A-III Ward without his permission. Next day, he attended his office but he found that no person in A-III Ward had gone to work. Before he left the office, he got the office of A-III Ward sealed and left word with the Inspector on duty that if any person came to work in that office thereafter, it should be reported to him. After Mr. Sundararajan reached home, he received a telephone message that accused No. 3 had come to A-III Ward Office with the keys. Mr.

Sundararajan directed the Inspector to take charge of the keys from accused No. 3 and ask him to attend office the next day.

Next day was a Monday (13-6-1955). On that day, Mr. Sundararajan accompanied by certain other officers went to the office of A-IlI Ward, opened the seal and the lock and after going inside, attached six registers. He also made a search for the assessment records of the ten persons in question but he did not find them. He then transferred accused No. 1 to an unimportant charge and instructed the Banks that no withdrawals should be allowed from any of the eleven accounts, since the said accounts appeared to him to be suspicious. He then sent for accused No. 3 and examined him. He also sent for accused No. 2 but he was not available since he had gone on leave. He directed one of his inspectors to enquire whether the said ten persons were real persons or were merely fictitious Dames. All this happened on the 13th June, 1955.

On the 14th June, 1955, Mr. Sundararajan went to A-III Ward Office along with accused No. 3. He wanted to search for the missing papers, viz., the assessment record of the ten persons in question. Accused No. 3 waited for some time and then opened accused No. 2's table and took out some papers. A list of these papers was made and they were taken in charge. This list has been signed by Mr. Sundararajan and the officers who accompanied him as well as by accused No.

3. Thereafter, accused Nos. 2 & 3 were suspended and as a result of the investigation which followed, all the three accused persons were put up for their trial before the learned Special Judge for Greater Bombay on the charges already indicated.

Before the learned trial Judge, accused No. 3 pleaded guilt to all the charges framed against him, whereas accused Nos. 1 and 2 denied that they had anything to do with the alleged commission of the offences charged.

The prosecution sought to prove its case against all the three persons by producing before the learned trial Judge the relevant documents including the files kept in A-III Ward office, and it examined four witnesses from the department for the purpose of showing the procedure that is followed in passing assessment orders and granting refunds and with the object of showing that the conspiracy could not have succeeded without the active assistance and co- operation of accused No. 1. These witnesses are Sundararajan, P. W. 1, Nagwekar, P. W. 2, Subramanian, P.W. 5 and Downak, P. W. 21. It also. examined Das Gupta, P. W. 26, to prove the handwriting of the accused persons. Eleven other witnesses were examined to prove the identity of accused Nos. 2 and 3 in respect of the steps taken by them to open accounts in different banks in order to encash the refund vouchers issued in pursuance of the refund orders passed by accused No. 1.

The learned trial Judge held that the evidence accused by the prosecution did not establish beyond a reasonable doubt 'the existence of the criminal conspiracy between the three accused. He was not inclined to hold that the ten alleged persons were non-existent. Even so, he proceeded to deal with the case on the basis that the ten persons were non- assesses and yet the refund orders had been passed in their favour. According to the learned trial Judge, accused No. I may have innocently signed the, relevant documents without looking to them in a hurry to dispose of cases, placing

confidence in his staff; and so, it would be difficult to hold that he was a member of the conspiracy. The utmost, said the learned Judge, that can be argued against him is that he was negligent. That is how he acquitted accused No. 1 of the principal charge of conspiracy under section 120-B &.ad as a result, the other charges as well. In regard to accused No. 2, the learned Judge was likewise not satisfied that the evidence adduced by the prosecution to prove his signatures on the relevant documents established the fact that he had signed those documents and he was not impressed by the other evidence led before him to show that he assisted accused No. 3 in the matter of encashing the refund vouchers. On these findings, accused No. 2 was acquitted of all the charges framed against him. Since accused No. 3 had pleaded guilty to the charges, the learned Judge convicted him under sections 47 1, of the I. P.C. and s. 5 (2) of the Prevention of Corruption Act and sentenced him to different terms of imprisonment which were ordered to run concurrently., He, however, acquitted accused No. 3 so far as the charge of conspiracy was concerned and he acquitted accused Nos. 1 and 2 of all the offences.

Against the order of acquittal passed by the learned Judge in favour of accused Nos. 1 and 2, the State of Maharashtra preferred an appeal in the Bombay High Co-art and this appeal succeeded. The High Court has found that the learned trial Judge a misdirected himself by assuming that accused No. I had pleaded that he had negligently signed the relevant documents and passed the relevant orders in a hurry, placing confidence in his staff. The High Court has pointed out that far from pleading negligence, accused No. 1 had definitely stated in his written statement filed in the trial Court that before he directed the issue of refund in the ten cases, be had examined the files containing the supporting documents and had satisfied himself that it was proper to allow the refund in each one of those cases. This position was conceded by the learned Advocate who appeared for accused No. 1 in the High Court. The High Court then examined the question as to whether the ten assessees were existing persons or were fictitious names and it came to the. conclusion that the ten names given for the eleven accounts in which refund orders were passed were fictitious names. The High Court then examined the circumstantial evidence on which the prosecution relied in support and proof of its main charge of conspiracy between the three accused persons and it came to the conclusion that the said charge had been proved against all the three accused persons beyond a reasonable doubt. That is how the High Court partially allowed the appeal preferred by the State and convicted all the three accused persons under section 120-B of the Indian Penal Code. It also convicted accused No. 2 of the offences under ss. 467, 471, I. P. C., and s. 5(2) of the Prevention of Corruption Act. In regard to the other offences charged, the order of acquittal was confirmed. Having convicted accused Nos. 1 & 2 under section 120-B, the High Court has sentenced each one of them to suffer rigorous imprisonment for 18 months for the said offence. Accused No. 2 has also been directed to suffer R.I. for 18 months in respect of each of the offences under ss. 467, 471, I. P. C. and s. 5 (2) of the Prevention of Corruption Act. These sentences are ordered to run concurrently with the sentence ordered under s. 120-B. It is against this order of conviction and sentence passed by the High Court in appeal that accused Nos. 1 , 2 have come to this Court by special leave by their appeals Nos. 176 of 1959 and 40 of 1960.

Since the impugned order of conviction and sentence was passed against the appellants by the High Court in exercise of its powers under s. 423 of the Criminal Procedure Code while hearing 'an appeal against their acquittal, the first question which calls for our decision relates to the extent of the High

Court's powers in interfering with orders of acquittal in appeal. This question has been discussed and considered in several judicial decisions both by the privy Council and this Court. In dealing with the different aspects of the problem raised by the construction- of s. 423, emphasis has sometimes shifted from one aspect to the other and that is likely to create a doubt. about the true scope and effect of the relevant provisions contained in s.

423. Therefore, we propose to deal with that point and state the position very briefly.

Section 423 (1) prescribes the powers of the appellate Court in disposing of appeals preferred before it and clauses (a) and (b) deal with appeals against acquittals and appeals against convictions respectively. There is no doubt that the power conferred by clause (a) which deals with an appeal against an order of acquittal is as wide as the power conferred by clause (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. That is one aspect of the question. The other aspect of the question centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High Court ;naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial Court and so, the fact that the accused person is entitled to the benefit of a reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case. As an appellate Court the High Court is generally slow in disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral evidence because the trial Court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in-dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. Sometimes, the width- of the power is emphasized, while on other occasions, the necessity to adopt a cautious approach in dealing with appeals against acquittals is emphasised, and the emphasis is expressed in different words or phrases used from time to time. But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused. this position has been clarified by the Privy Council in Sheo Swarup v. The, King Emperor (1) and Nur Mohammad v. Emperor In some of the earlier decisions of this Court, however, in emphasizing the importance of adopting a cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, "the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for (1) (1934) L.R. 61 1. A. 398.

(2) A.I.R. 1945 P.C. 151, very substantial and compelling reasons": vide Surajpal Singh v. The State (1). Similarly in Ajmer Singh v. State of Punjab (2), it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are "very substantial and compelling reasons to do so.') In some other decisions, it has been stated that an order of

acquittal can be reversed only for "good and sufficiently cogent reasons" or for "strong reasons". In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended- to introduce an additional condition in clause (a) of section 423 (1) of the Code. All that the said observations are intended to em- phasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in the case of Shoo Swarup, the presumption of innocence in favour of the accused "is not certainly weakened by the fact that he has been acquitted at his trial." Therefore, the test suggested by the expression "substantial and compelling reasons" should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in Sanwat Singh v. State of Rajasthan (2), and Harbans Singh v. The State of Punjab (4); and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse. Therefore, the question which we have to ask ourselves in the present appeals is whether on the material produced by the prosecution, the High Court was justified in reaching the conclusion that the (1) (1952) S.C.R. 193, 201. (2) (1953) S.C.R 418 (3) (1961) 3 S C. R. 120. (4) (1962) Supp. I.S.C.R 104.

prosecution case against the appellants had been proved beyond a reason-able doubt, and that the contrary view taken by the trial Court was, erroneous. In answering this question, we would, no doubt, consider the salient and broad features of the evidence in order to appreciate the grievance made by the appellants against the conclusions of the High Court. But under Art. 136 we would ordinarily be reluctant to interfere with the finding of fact recorded by the High Court particularly where the said findings are based on appreciation of oral evidence.

There is another point of law which must be considered before dealing with the evidence in this case. The prosecution case against accused No. 1 rests on circumstantial evidence. The main charge of conspiracy under section 120 B is sought to be established by the alleged conduct of the conspirators and so far as accused No. 1 is concerned, that rests on circumstantial evidence alone. It is a well established rule in criminal jurisprudence that circumstantial evidence can be reasonably made the basis of an accused person's conviction if it is of such a character that it is wholly inconsistent with the innocence of the accused and is consistent only with his guilt. If the circumstances proved in the case are consistent either with the innocence of the accused or with his guilt, then the accused is entitled to the benefit of doubt. There is no doubt or dispute about this position. But in applying this principle, it is necessary to distinguish between facts which may be called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts the Court has to judge the evidence in the ordinary way, and in the appreciation of evidence in respect of the proof of these basic or primary facts there is no scope for the application of the doctrine of benefit of doubt. The Court considers the evidence and decides whether that evidences proves a particular fact or not. When it is held that a certain fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not, and in dealing with this aspect of the problem, the doctrine of benefit of doubt would apply and an inference of guilt can be drawn only if the proved fact is wholly inconsistent with the innocence of the accused and is consistent only with his guilt. It is in the light of this legal position

that the evidence in the present case has to be appreciated. The Court then considered the evidence and the findings of the High Court and dismissed the appeals.

Appeals dismissed.