BADRI RAI & ANOTHER

v.

THE STATE OF BIHAR

1958

August 18.

(B. P. SINHA and JAFER IMAM JJ.)

Evidence—Conspiracy to bribe a public servant—Statements of co-conspirator—When admissible against others—Indian Penal Code (Act 45 of 1860), ss. 120B, 165A—Indian Evidence Act (1 of 1872), s. 10.

The appellants were prosecuted on charges under s. 120B read with s. 165A of the Indian Penal Code, for having conspired to commit the offence of bribing a public servant in connection with the discharge of his public duties. The case against them was that on August 24, 1953, when the Inspector of Police who was in charge of the investigation of a case in which the second appellant was involved, was on his way to the police station, the appellants accosted him on the road and the second appellant asked him to hush up the case for valuable consideration. Some days later, on August 31 the first appellant offered to the Inspector at the police station a packet containing Rs. 500 in currency notes and told him that the second appellant had sent the money through him in pursuance of the talk that they had with him on August 24, as a consideration for hushing up the case. The courts below accepted the evidence adduced on behalf of the prosecution and convicted the appellants. On appeal by special leave it was contended that the court had no reasonable grounds to believe that the appellants had entered into a conspiracy to commit the offence and that the statement of August 31 was not admissible against the second appellant because (1) the charge under s. 120B had been deliberately added in order that the act or statement of the one would be admissible against the other, and (2) the object of the conspiracy, namely the payment of the hush money, had been accomplished before the statement in question was made:

Held, (1) that the incident of August 24 was evidence that the intention to commit the offence had been entertained by both the appellants on or before that date showing a clear indication of the existence of the conspiracy, and that the statement made by the first appellant on August 31 was admissible not only to prove that the second appellant had constituted the first appellant his agent in the perpetration of the crime but also to prove the existence of the conspiracy; the court was therefore justified in drawing up the charge under s. 120B along with that under s. 165A of the Indian Penal Code.

(2) that the payment of the bribe and the statement of August 31 accompanying it, were part of the same transaction, having been made in the course of the conspiracy, and the

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statement in question was therefore admissible under s. 10 of the Indian Evidence Act.

Mirza Akbar v. *The King Emperor*, (1940) L. R. 67 I. A. 336 and *R.* v. *Blake*, (1844) 6 Q. B. 126, relied on.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 79 of 1956.

Appeal by special leave from the judgment and order dated September 7, 1955, of the Patna High Court in Criminal Appeal No. 370 of 1954, arising out of the judgment and order dated July 26, 1954, of the Court of the Special Judge at Bhagalpur in Special Case No. 14 of 1954.

B. R. L. Iyengar, for appellant No. 1.

S. P. Sinha and *P. C. Agarwala*, for appellant No. 2.

R. C. Prasad, for the respondent.

1958. August 18. The Judgment of the Court was delivered by

Sinha J.

SINHA J.—This appeal by special leave is directed against the concurrent judgments and orders of the courts below, convicting the two appellants under s. 120B read with s. 165A, Indian Penal Code, and sentencing them to rigorous imprisonment for 18 months, and to pay a fine of Rs. 200 each, and in default of payment of fine, to undergo further rigorous imprisonment for 6 months. A separate conviction under s. 165A has been recorded in respect of the first appellant, Badri. Under this head, he has been sentenced to rigorous imprisonment for 18 months, the sentence to run concurrently with the sentence under the common charge.

The facts as found by the courts below, which could not be successfully challenged before us, are as follows: The second appellant, Ramji Sonar, is a goldsmith by profession and runs a shop on the main road in the village Naogachia. In that village there is a police station and the shop in question is situated in between the police station building and the residential quarters of the Inspector of police, who was the First Informant in the case, resulting in the conviction and

sentences of the appellants as stated above. The first appellant, Badri, runs a school for small boys in the same village about 50 yards away from the shop aforesaid of the second appellant. On August 22, 1953, the First Informant, who, holding the position of an Inspector of police, was in charge of the police station, made a seizure of certain ornaments and molten silver from a vacant building in front of the house of the second appellant, Ramji. Those ornaments were being melted by six strangers coming from distant places, with implements for melting, said to have been supplied by Ramji. The seizure was made on the suspicion that the ornaments and the molten silver were stolen property, which were to be sold to Ramji in a shape which could not be identified with any stolen property. After making the seizure-list of the properties, thus seized, the police officer arrested Ramji, as also the other six strangers. Ramji was released on bail that very day. Police investigations into the case, thus started, followed. During that period, on August 24, 1953, at about 7-30 p.m., the Inspector was on his way from his residential quarters to the police station, when both the appellants accosted him on the road, and Ramji asked him to hush up the case for a valuable consideration. The Inspector told them that he could not talk to them on the road, and that they should come to the police station. Thereafter, the Inspector reported the matter to his superior officer, the D.S.P. (P.W. 8), and to the sub-inspector, P.W. 9, attached to the same police station. On August 31, the same year, the first appellant, Badri, came to the police station, saw the Inspector in the central room of the *thana*, and offered to him a packet wrapped in a piece of old newspaper, containing Rs. 500 in currency notes. He told the Inspector, (P. W. 1), that the second appellant, Ramji, had sent the money through him in pursuance of the talk that they had with him in the evening of August 24, as a consideration for hushing up the case that was pending against Ramji. At the time the offer was made, a number of police officers besides a local merchant, (P.W. 7), were present there. The Inspector at once

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drew up the first information report of the offer of the bribe on his own statement and prepared a seizure-list of the money, thus offered, and at once arrested Badri and put him in the *thana* lock-up. After the usual investigation the appellants were placed on their trial, with the result indicated above.

Both the courts below have found that the prosecution case, a summary of which has been given above, has been proved by good and reliable evidence, and that the defence case that the prosecution was started by the inspector out of spite and in order to defend himself against the consequences of wrongfully arresting Ramji, was unfounded. We are not impressed with the halting criticism of the evidence adduced in this case on behalf of the prosecution and accepted by the courts below. Ordinarily, this Court does not interfere with concurrent findings of fact.

The only serious question raised in this appeal is the point raised on behalf of the second appellant, Ramji, as to whether the statement made by the first appellant, Badri, on August 31, 1953, that he had been sent by the second appellant with the money to be offered by way of bribe to the police officer, was admissible against him. The learned counsel for the appellant was not able clearly to formulate his grounds of objection to the admissibility of that piece of evidence, which is the basis of the charge against both the accused persons. Section 10 of the Indian Evidence Act, is a complete answer to this contention. The section is in these terms :—

"10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

The incident of August 24, when both the appellants

approached the inspector with the proposal that he should hush up the case against the second appellant, for which he would be amply rewarded, is clear evidence of the two persons having conspired to commit the offence of bribing a public servant in connection with the discharge of his public duties. There cannot, therefore, be the least doubt that the court had reasonable grounds to believe that the appellants had entered into a conspiracy to commit the offence. Therefore, the charge under s. 120B had been properly framed against both of them. That being so, anything said or done by any one of the two appellants, with reference to the common intention, namely, the conspiracy to offer bribe, was equally admissible against both of them. The statement made by the first appellant on August 31, that he had been sent by the second appellant to make the offer of the bribe in order to hush up the case which was then under investigation, is admissible not only against the maker of the statement—the first appellant—but also against the second appellant, whose agent the former was, in pursuance of the object of the conspiracy. That statement is admissible not only to prove that the second appellant had constituted the first appellant his agent in the perpetration of the crime, as also to prove the existence of the conspiracy itself. The incident of August 24, is evidence that the intention to commit the crime had been entertained by both of them on or before that date. Anything said or done or written by any one of the two conspirators on and after that date until the object of the conspiracy had been accomplished, is evidence against both of them.

It was faintly suggested on behalf of the second appellant, that the charge under s. 120B of the Indian Penal Code, had been deliberately added by the prosecution in order to make the first appellant's statement of August 31, admissible against the second appellant, as otherwise it could not have been used as evidence against him. As already indicated, the incident of August 24, is a clear indication of the existence of the conspiracy, and the court was perfectly justified in drawing up the charge under s. 120B also. It is no

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answer in law to say that unless the charge under that section had been framed, the act or statement of one could not be admissible against the other. Section 10 of the Indian Evidence Act, has been deliberately enacted in order to make such acts and statements of a co-conspirator admissible against the whole body of conspirators, because of the nature of the crime. A conspiracy is hatched in secrecy and executed in darkness. Naturally, therefore, it is not feasible for the prosecution to connect each isolated act or statement of one accused with the acts or statements of the others, unless there is a common bond linking all of them together. Ordinarily, specially in a criminal case, one person cannot be made responsible for the acts or statements of another. It is only when there is evidence of a concerted action in furtherance of a common intention to commit a crime, that the law has introduced this rule of common responsibility, on the principle that every one concerned in a conspiracy is acting as the agent of the rest of them. As soon as the court has reasonable grounds to believe that there is identity of interest or community of purpose between a number of persons, any act done, or any statement or declaration made, by any one of the co-conspirators is, naturally, held to be the act or statement of the other conspirators, if the act or the declaration has any relation to the object of the conspiracy. Otherwise, stray acts done in darkness in prosecution of an object hatched in secrecy, may not become intelligible without reference to the common purpose running through the chain of acts or illegal omissions attributable to individual members of the conspiracy.

It was also suggested that the statement made by the first appellant on August 31, about the purpose of the payment, having been made after the payment, was not admissible in evidence because the object of the conspiracy had been accomplished before the statement in question was made. Reliance was placed in this connection upon the decision of their Lordships of the Judicial Committee in *Mirza Akbar* v. *The King Emperor* (1). But that decision is itself an answer to the

(1) (1940) L.R. 67 I.A. 336.

contention raised. The payment was made, and the statement that it was being made with a view to hushing up the case against the second appellant is a part of the same transaction, that is to say, the statement accompanied the act of payment of the bribe. Hence, it cannot be said that the statement was made after the object of the conspiracy had already been accomplished. The object of the conspiracy was the hushing up of the criminal case against the second appellant by bribing the public servant who was in charge of the investigation of the case. The object of the conspiracy was yet far from being accomplished when the statement in question was made. The leading case on the subject is that of *R.* v. *Blake* (1). That decision is an authority both for the positive and the negative aspects of the question. It lays down what is admissible and what is not admissible. It held that the documents actually used in effectuating the objects of the conspiracy, were admissible, and that those documents which had been created by one of the conspirators after the object of the conspiracy had been achieved, were not admissible. Section 10 of the Indian Evidence Act is on the same lines. It is manifest that the statement in question in the present case was made by the first appellant in the course of the conspiracy, and accompanied the act of the payment of the money, and is clearly covered by the provisions of s. 10, quoted above. It must, therefore, be held that there is no substance in the only question of law raised in this appeal. It is, accordingly, dismissed.

Appeal dismissed.

(1) (1844) 6 Q.B. 126 ; 115 E.R. 49.