

(1974) 04 RAJ CK 0017

In the Rajasthan High Court

Case No : Criminal Appeal No's. 155 and 170 of 1969

Bhagwandas Keshwani and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 03-04-1974

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18A

Evidence Act, 1872 — Section 10, 11, 8

Penal Code, 1860 (IPC) — Section 120B, 420, 467, 471

Citation : (1974) WLN 532

Hon'ble Judges : Y.V. Chandrachud, J;M.H. Beg, J

Bench : Division Bench

Judgement

M.H. Beg, J.—The appellants-Bhagwandas Keshwani and Vishnu Kumar before us by grant of leave were, charged under Sections 120B, 420 and 467 & 471 Indian Penal Code. Keshwani was also charged u/s 5, Sub-section (2) read with Sections 5(1)(d) of the Prevention of Corruption Act They were acquitted, of charges, under. Sections 467 and 471 I.P.C. The Special Judge who tried their case convicted Keshwani and Vishnu Kumar u/s 120B and u/s 420 I.P.C. and sentenced them to one year's rigorous imprisonment and to pay a fine of Rs. 500/-, and, in default of payment of fine, to undergo rigorous imprisonment for three months more. The learned Judge convicted & sentenced Keshwani to one year's rigorous imprisonment & u/s 5(2) read with Section 5(1)(d) of Prevention of Corruption Act and sentenced him to one year's rigorous imprisonment and a fine of Rs. 500/-, & in default of payment of fine to undergo further imprisonment for three months. The sentences were directed to run concurrently. The High Court of Rajasthan had, on appeal, affirmed the convictions and sentences.

2. The prosecution case against the appellant was that Keshwani, an employee, of the N C. Directorate at favour, and Vishnu Kumar, Proprietor of a Medical Store, had conspired to fabricate three cash memos dated 22-5-1962 17-6-1962, 2nd 11-7-1962 for medicines for an amount totalling upto Rs. 31.89 which had

not been purchased at all, and, on the strength of these cash memos, Keshwani had prepared a false medical reimbursement bill and realised this amount from the Govt. The Special Judge as well as the High Court had concurrently found that no medicines were actually purchased from Vishnu Kumar by Keshwani, but the amount, falsely shown as paid, had been realised by the appellant Keshwani from Govt. In fact, Keshwani admitted that he had obtained the payment for the medicines from the Govt.; He had asserted that the cash memos were genuine and that they were given on payment of the prices of the medicines prescribed and actually purchased and taken. But, Vishnu Kumar, the Proprietor of the Medical Store, admitted that the case memos were prepared at the instance of Keshwani, who was in the habit of taking such cash memos every month on the pretext that he would, otherwise, have to give his whole salary to his father who would not allow him to deduct some pocket money for himself and his wife without such cash memos. Both the Court, upon which the duty rested of investigating and deciding questions of fact, had thoroughly discussed the evidence in the case and had come to the conclusion that the reason given by each accused for the cash memos was false. The natural inference was that the accused Keshwani had used false and fictitious cash memos to obtain payment of bills for reimbursement of money spent on medicines. The friendship between the two appellants was also relied upon to reach the conclusion that they must have been parties to a conspiracy to defraud the Govt., and realise money on fictitious bills.

3. Learned Counsel for the appellant Keshwani had contended that the conviction of his client rests on no evidence at all as the conduct, the account books, and statements of Vishnu Kumar could not be used against the appellant Keshwani. It seems to us that the extreme argument that nothing said or done by Vishnu Kumar could be taken into account in judging the guilt of Keshwani when there is a charge for conspiracy u/s 120B I.P.C. overlooks the provisions of Section 10 of the Evidence Act which reads as follows:

Section 10. Things said or done by conspirator in reference to common design Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, any thing 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.

At any rate, the proof of the fact, even from admissions of Vishnu Kumar, that false and fictitious cash memos were prepared due to an agreement between the two accused, could be used against each accused. After that, the only question which had to be decided was: was the agreement what Vishnu Kumar alleged or was it what the prosecution set up as the most natural logical inference? In Cases of conspiracy better evidence than acts and statements of coconspirators in

pursuance of the conspiracy is hardly ever available.

4. The trial Court had pointed out that the plea of Keshwani was that the cash memos Ex P. 2, dated 22-5-1952, and Ex. P. 4 dated 17-6-62, and Ex P. 6 dated 11-7-62, were given again-it money actually paid for medicines in fact handed over to him and used by Him. When asked to explain why Vishnu Kumar was giving a different version, he stated, "He tells lies to save himself because the medicines he gave me were not in his stock and accounted for."

5. Keshwani was asked to explain the evidence given by Manoharlal P.W.3, the Accountant of M/s. Govind Medical Store, of which Vishnu Kumar was the proprietor, showing that the medicines purchased on the dates shown on the cash memos could not have been given to Keshwani at all as some of them were not in stock and the only Teramycin tube shown to be in stock of the medical store was proved, from the stock and account books, to have been sold in January, 1963. He said: "Cannot say whether these medicines were or were not in stock of M/s. Govind Medical Score but I did purchase them & paid for them". Keshwani also stated that he took these medicines and showed them to the Doctor who had prescribed them. Thus, the question whether Vishnu Kumar, the proprietor of Giving Medical Store, was telling a lie in stating that the cash memos given to Vishnu Kumar, were actually fictitious, given due to an attempt to oblige his friend Keshwani, was true or false, was a relevant fact in issue which the Court had to determine. The appellant Keshwani also, by his assertion, that he had shown the medicines were or were not actually shown to the Doctor before Keshwani used them.

6. It is true that Manoharlal, P.W. 3, stated that he worked as an Accountant from June or July 1962 to May, 1963, and, after admitting that he was working in the shop on 17-6-1962, seems to have stated at one place, under cross-examination, that he began to work in the shop of Vishnu Kumar "with effect from 17-7-"62. Nevertheless, the position of the stocks as disclosed by the registers and account books kept by the Accountant of the Medical Store could be and was duly proved by this witness. Ha also proved that he hid actually cancelled the carbon copy of the cash memos Ex. P 4, dated 17-6-1962 so that the medicines shown on the cash memo of that date as bought were not actually sold at all.

7. Learned Counsel for the State of Rajasthan has rightly drawn our attention to the provisions of Section 18A of the Drugs and Cosmetic Act and Rule 65 (4) of the Rules made under that Act to show that a licensed Chemist was duty bound to keep a record of the stocks of medicines of the kind shown to have been purchased under the cash memos. No questions were put to to Manoharlal which could indicate that the provisions of law in this respect were not complied with by Vishnu Kumar or that the account books and the stocks registers of the Medical Store were not properly kept for medicines is stock and sold. All that was proved was that Vishnu Kumar was issuing some fictitious and irregular cash memos also which were either cancelled or not entered in the regularly kept account

books. It was not suggested to this witness that this was done for any reason apart from some benefit, to Keshwani. We find that there was evidence, admissible u/s 11 Evidence Act in any event, before the Court to enable them to hold that no medicines were actually purchased by Keshwani Dr Mathur, who gave, the prescriptions and to whom the medicines were alleged to have been shown, had stated that Keshwani did not show him the medicines purchased, fie also stated : "There no are Govt. orders so far as I know that a Doctor has to see the medicines after these have been purchased by the patients."

8. We do not think that on the documentary, oral, and circumstantial evidence on record, it could be said that the prosecution could not or did not establish that the appellant Keshwani, did not purchase the medicines he was wrongly shown, by the cash memos only, to have purchased, Hence, it followed quite naturally and logically, that he had fraudulently realised the sum of Rs. 31.89 by preparing fictitious reimbursement bill. Indeed, this Was only an amount which he was Cleary proved to havg dishonestly realised. There is some material on the record to show that the total amount of money realised by Keshwani on such bills was so large that it had aroused the suspicions of the authorities with the result that an enquiry by the C.I.D. had to be instituted which brought the facts, on which the appellants were prosecuted, to light.

9. So far as the case against the appellant Vishnu Kumar is concerned we think that, after his admission that the cash memos were fictitious, he had to prove that the reason given by him for preparing them was correct. Hence, the only defence witness produced by him Hanuman Prashad, D.W. 2, in an, attempt to prove this, stated in his examination in-chief:

I have been knowing the accused Vishnu Kumar for a period of about 4 or 5 years since he started Govind Medical Store. Once the accused said to me, the accused Bhagwan Keshwani gets the cash memo prepared by him and takes the same to show to his lather. Neither he purchases the medicines nor makes the payment but takes the cash memo. I told him that he would be involved in a case if he would do so as the Government pays us this money. It happened 4 years ago. It happened in the month of June or July, 1962.

This witness was a clerk in the office of the Accountant General at Jaipur. His hearsay evidence in so far as it relates to the truth of a statement of Vishnu Kumar could not be, admissible even u/s 8 of the Evidence Act, as the statement did not explain any accompanying conduct of Vishnu Kumar.

10. It is difficult to believe that a proprietor of a medical store, who is entrusted with the sale of medicines some of which are poisonous and dangerous, could, act in such an irresponsible manner as co-adopt the practice of giving fictitious cash memos without knowing that they could be used for or that he could be easily persuaded by Keshwani to issue them, as he pretended to have been, for the purpose for which he alleged having given these fictitious cash memos.

11. From the evidence on record, it is certainly established that Vishnu Kumar

had prepared fictitious cash memos, as he actually admitted, for some purpose which could be assumed to be ulterior and improper. Never the less it is difficult to hold on the slender evidence on record, that the purpose of this fabrication alleged by the prosecution had been established beyond reasonable doubt or that a conspiracy between the two appellants to prepare fictitious cash memos for that purpose must necessarily be inferred from the suspicious circumstances proved against him. We think that although, Vishnu Kumar did not prove his defence, yet, he is entitled to the benefit of the principle that circumstantial evidence must be of such a nature, as to exclude any other inference except that of guilt advanced by the prosecution to sustain a conviction. Consequently, we give Vishnu Kumar the benefit of doubt.

12. The result is that we set aside the convictions and sentences of Vishnu Kumar and acquit him of the charges levelled against him.

13. It necessarily follows that the charge u/s 120B must fail against Keshwani also. Hence, we set aside the conviction & sentence of Bhagwandas Keswani also u/s 120B I.P.C. But, we maintain the conviction of Keshwani u/s 420 I.P.C. and u/s 5(1)(d) read with Section 5(2) of Prevention of Corruption Act, which lays down that the sentence upon a convicted person shall not be less than one year except for special reasons to be recorded in writing. We find that the offences with which Keshwani was charged were committed more than 12 years ago. The cheating with which he was charged was in respect of a petty sum of Rs. 31.89. This Court has, sometimes, taken into account the long period for which the sentence imposed may have remained hanging over the head of a convict like the sword of Democles. Moreover, a period of 12 years is a long time in the course of which "the conditions of life and the outlook of a man may have changed entirely. This case has taken so long to decide finally due to no fault of the appellant. Consequently, we reduce the sentences of imprisonment upon Keshwani u/s 420 I.P.C. and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act to the period already undergone, but we maintain the fine of Rs. 500/ imposed upon Keshwani, on each count, and, in default of payment of each fine, he shall undergo a sentence of three months rigorous imprisonment which will run consequently. Subject to this modification, the appeal of Bhagwandas Keshwani is hereby dismissed.