

(2011) 03 DEL CK 0030

In the Delhi High Court

Case No : Criminal Appeal No. 59 of 2002

Tarsem Lal Verma

APPELLANT

Vs

The State (Govt. of NCT)

RESPONDENT

Date of Decision : 25-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Penal Code, 1860 (IPC) — Section 161

Prevention of Corruption Act, 1988 — Section 5, 5(2)

Citation : (2011) 3 AD 633

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Nitya Ramakrishnan and Suhasini Sen, for the Appellant; Narender Mann for Central Bureau of Investigation, for the Respondent

Judgement

M.L. Mehta, J.—The present appeal is directed against the judgment dated 24th January, 2002 and order of sentence dated 28th January, 2002 of Special Judge, Shri R.K. Gauba. By the impugned judgment and order, the accused/Appellant was convicted u/s 161 of the Indian Penal Code (for short "the Code") and Section 5(2) read with Section 5(i)(d) of the Prevention of Corruption Act, 1947 (hereinafter referred to as "the Act") and sentenced to undergo three years rigorous imprisonment with fine of Rs. 500/- u/s 161 of the Code and four years rigorous imprisonment with fine of Rs. 500/- u/s 5(2) of P.C. Act. In default of payment of fine he was ordered to undergo further RI of three months on each count.

2. The Appellant was an employee of Maruti Udyog Limited (MUL) as Picker in spare parts department. The allegations against him as set out in the complaint (Exhibit PW1/A) made by Naresh Batra, Manager Spare Parts of M/s. Competent Automobiles Company (P) Limited are that their company had booked an order with MUL for supply of spare parts against advance payment. The accused, who was posted as a Picker in the spare parts department of MUL, came to him and told him that he along with two other Pickers, namely, Ganpat and Vinod, has

placed additional spare parts in the goods packed against their order and for which he demanded a sum of Rs. 12,000/- as bribe to be shared by all of them. Accused came in the office of the complainant on 26th August, 1988 and handed over two slips mentioning the details of the surplus goods. The complainant handed over the complaint (PW1/A) along with these two slips mentioning details of the goods and their value as given to him by the accused to SP(CBI) on 26th August, 1988.

3. Based on this, a case was registered and trap was laid by the CBI. The trap party comprised of Inspector Rai Singh Khatri (PW8), two independent witnesses, namely, Santosh Kumar Mishra (PW4) and Rohtash (PW7) and certain other CBI officials. The complainant (PW1) produced amount of Rs. 12,000/- in the form of government currency notes (Exhibits P.4 to P.120) each of denomination of Rs. 100/-. The usual trap procedure was followed by giving treatment of phenolphthalein powder to the currency notes and noting their numbers and also demonstration of procedure in the presence of members of raiding party. PW4 and PW7, the two independent witnesses, were directed to remain close to the complainant (PW1), while other members of the raiding party were instructed to remain nearby. All the pre-raid preparations were reduced into writing in the form of Handing Over Memo (Exhibit PW1/B), which was signed by DSP Darshan Singh, complainant, two other independent witnesses and other members of the raiding party. The raiding party reached the premises of Competent Automobile at about 5.15 PM. Accused also arrived there. PW1 and PW7 talked to the accused, who demanded money and which was passed on to him by the complainant (PW1) in the presence of PW4 and PW7. PW1 gave the pre-appointed signal whereby other members of the raiding party came on the scene and caught the accused. The tainted currency notes were taken out of the right pocket of pant of the accused by PW4 and he tallied the numbers with the handing over memo (Exhibit PW1/B). The accused was made to dip fingers of his both hands in separate solution of Sodium Carbonate, which turned pink in the process. Similarly, the wash of right side pant pocket of the accused was taken which turned the solution of Sodium Carbonate pink. The three separate solutions were sealed separately and taken into possession vide a memo (Exhibit PW1/C). The accused was arrested and the samples were sent to CFSL which on analysis gave positive result of presence of phenolphthalein powder. The accused was chargesheeted u/s 161 of the Code and Section 5(2) read with Section 5(i) (d) of the Act, to which he pleaded not guilty and was put on trial. The prosecution examined as many as 14 witnesses. The accused did not choose to lead any evidence in his defence. Except the complainant (PW1), two independent witnesses, namely, Santosh Kumar Mishra (PW4), Rohtash (PW7) and Inspector Rai Singh Khatri (PW8), all other witnesses are either of formal nature or their testimonies are not under challenge.

4. Learned defence counsel, Ms. Nitya Ramakrishnan, has assailed the impugned judgment referring to the analysis of the statements of these witnesses, namely, PW1, PW4, PW7 and PW8 by learned Special Judge and submitted that the

learned Judge has erred in relying upon the testimonies of PW1 and PW4, who did not support the prosecution case and turned hostile and based his findings just on the inferences drawn from the statements of these four witnesses. She submitted that when PW1 and PW4 did not support the prosecution case, it was entirely unsafe to record a finding of conviction on the testimonies of PW7 and PW8, particularly with regard to requisite evidence of demand, acceptance and recovery of money by accused. In this regard, learned Counsel relied upon the case of Banarsi Dass Vs. State of Haryana, . While trying to point out certain discrepancies in the statements of these witnesses, learned Counsel, particularly referred to the inconsistent version of the prosecution regarding two other persons, namely, Ganpat and Vinod, and also referred to discrepancy regarding the bribe amount being Rs. 12,000/- or Rs. 15,000/-. Learned Counsel also submitted that there was no evidence as to who had taken the washed solutions to CFSL and where were those kept before handing over there. She submitted that there being no evidence in this regard, it could not be ruled out that the washed solutions, which came to be examined at the CFSL were tempered or changed.

5. As against this, Shri Narender Mann, learned standing counsel for CBI, submitted that though PW1 and PW4 have resiled from their previous version and tried to support the accused, but reading their testimonies as a whole in the background of corroboration from the statements of PW7 and PW8 and other circumstantial evidence, the case as set up by the prosecution stands proved beyond reasonable doubt. He submitted that discrepancies as sought to be demonstrated by the learned defence counsel are natural since the witnesses came to be examined after many years after the incident. With regard to the alleged discrepancies in the prosecution case regarding the bribe amount being Rs. 12,000/- or Rs. 15,000/-, he submitted that there was no such discrepancy in this regard inasmuch what was demanded, accepted and recovered was Rs. 12,000/- and any statement made by the PW1 regarding the amount of Rs. 15,000/-, was only an attempt sought to be made by him to distort the version to help the accused after being won over. With regard to the alleged version regarding discrepancy in recording the names of Ganpat and Vinod also, he submitted that this also appeared to be an attempt by the accused to distort and in any case that was not relevant since there was enough evidence on record to prove demand, acceptance and recovery of the bribed amount from the accused. With regard to the submissions of learned defence counsel alleging lack of evidence of the washed solutions being taken to CFSL, learned standing counsel, Mr. Mann, submitted that PW2, Mr. N.K. Prasad, Senior Scientific Officer, CFSL, had testified that when the samples of washes were received, he had found their seals to be intact as per the specimen seals and he had himself analysed the contents of the bottle separately and found each of them giving positive test for the presence of phenolphthalein powder.

6. I have given my considered thought to the submissions of the learned Counsel for the parties.

7. To constitute offence u/s 161 of the Code, it is necessary for the prosecution to prove that there was demand of money and the same was voluntarily accepted by the accused. Similarly, in terms of the Section 5(i)(d) of the Act, the demand and acceptance of the money for doing a favour in discharge of his official duties, is sine qua non to the conviction of the accused (vide Banarasi Dass (supra)).

8. The learned defence counsel has centered her arguments mainly on the appreciation of the evidence by the learned Special Judge of the testimonies of PW1, PW4, PW7 and PW8 and relying upon them.

9. At the outset, it may be noted that it is settled law that if the trial Judge has rightly appreciated the evidence, this Court will be reluctant to interfere. In the case of State of U.P. v. N.K. Anthony (1985) 1 SCC 501, the Supreme Court laid down certain principles for appreciation of the evidence of a witness. The same are as under:

10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned Counsel for the Respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible.

10. Before proceeding to see as to whether the learned Special Judge erred somewhere in appreciating the evidence of the prosecution witnesses, it may

also be noted that while appreciating the evidence of a witness, one may come across certain discrepancies in his depositions. The law with regard to credence to be given to the discrepancies is trite that in the deposition of witnesses, there are normal discrepancies, howsoever honest and truthful they may be. Those discrepancies are due to normal errors and observations, normal errors of memory due to lapse of time, due to mental depositions such as shock and horror at the time of occurrence and the like. The material discrepancies, however, are those which are not normal and are not accepted of a normal person (vide *State of Rajasthan Vs. Smt. Kalki and Another*,). Earlier in the case of *Zamir Ahmed v. The State* 1996 CrL. Law Journal 2354 with regard to the discrepancies, it was observed by the Division Bench of this Court that:

It would be a hard not to crack to find out a case which is bereft of embellishment, exaggeration, contradictions and inconsistencies. The said things are natural. Such contradictions and inconsistencies are bound to creep in with the passage of time. If the witnesses are not tutored they would come out with a natural and spontaneous version on their own. The two persons on being asked to reproduce a particular incident which they have witnessed with their own eyes would be unable to do so in like manner. Each one of them will narrate the same in his own words, according to his own perception and in proportion to his intelligence power of observation.

11. With regard to the evidentiary value that may be attached to the testimony of a witness, who, during the course of his examination, resiles from his previous version, the law is well settled. I am inclined over here to cite the observation of the Hon'ble Supreme Court in the case of *Syad Akbar Vs. State of Karnataka*, , wherein the Supreme Court relied on their earlier judgment in *Sat Paul Vs. Delhi Administration*, to the following effect:

12. ...Even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the Court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether, It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto.

12. Having seen that the complainant (PW1) was trying to resile from some parts of his previous case/version and trying to give a new dimension to the prosecution story with a view to help the accused, the learned Judge observed that the demeanour of PW1 leaves no doubt of his having been won over by the

accused. Since he tried to resile from his case as set up in the complaint, he was subjected to cross-examination by the prosecution. Reading his examination-in-chief and also cross-examination as conducted by the prosecution as also by the defence counsel, it is noted that the complainant initially supported his complaint but gradually tried to resile therefore. However, in the process of cross-examination, he was again brought to some relevant facts as set out by him in the complaint. Not only that he identified the accused present in the court as the one who was a Picker of spare parts of MUL and had approached him on 23rd August, 1988 with the information that the order had been packed, he also admitted having gone to CBI on 26th August, 1988 to lodge a complaint. He also admitted the complaint (Exhibit PW1/A) to be in his own handwriting and under his signatures.

13. It was put to the complainant PW1 that the accused had given him two slips (Ex. PW4/A1 & A2) mentioning the details of goods and their value which he passed on to CBI on 26th August, 1988. Though, he denied it to be correct but he admitted that one of the boxes contained extra material beyond the order. He said that after checking the material as above they went towards the gate to make payment where he met accused, Vinod and Ganpat and they all said "Paisa De Deejeeye" (give money). On this he took out the money and while passing it on, accused persons got suspicious and started running. Trap party chased them and managed to apprehend the accused whereas Ganpat and Vinod escaped. In the process, the tainted money fell on the ground. It was put to him by the learned Prosecutor that he was giving distorted version in this regard.

14. He also deposed about having given 120 currency notes of Rs. 100/- each (Exhibit P1 to P120) total valuing Rs. 12,000/- for the purpose of applying chemical powder and that their numbers being noted down in the handing over memo (Exhibit PW1/B) signed by him. Then, he also admitted the procedure followed in applying the chemical on the currency notes and the manner in which the notes were to be given over to the accused. He also admitted recording of pre-raid proceedings in the said memo PW1/B. He further admitted of having left with the raiding party and also about the public witnesses having joined for the purposes of overhearing the conversation and watching the transaction of handing over the money by him to the accused. He also supported the prosecution case by further conceding that on arrival in his office he along with PW4 and other independent witnesses sat in his store room while other members of the raiding party took their position outside. He testified that consignment from MUL reached at the company's premises and that he got opened one of the boxes. He conceded that extra spare parts were found in the consignment and were seized vide memo (Exhibit PW1/D). He further conceded hand washes and pant washes of the accused being taken in his presence and the solution changing colours.

15. Similarly PW4 also after some part of his deposition was allowed to be cross-examined by the prosecution counsel. He also in his cross-examination as a

whole admitted certain facts in support of prosecution case. Like PW7, he was also called as an independent witness by the CBI to witness the trap proceedings. This witness testified that he was introduced to the complainant (PW1) and was shown two slips PW4/A1 & A2 and he also appended his signatures thereon. These are the same slips which were given by the complainant along with his complaint to the CBI referring them as the slips given to him by the accused. He, however, in the cross-examination by the learned Counsel for the prosecution admitted that after demonstration, currency notes were handed over to the complainant with an instruction to pass over to the accused after getting spare parts. He also admitted that on 26.08.1988, he visited CBI office where other independent witness, namely, Rohtas (PW7) also arrived. He also admitted that handing over memo Exhibit PW1/B was prepared and that it was signed by him. In fact, he also admitted the suggestion that complainant (PW1) had taken out the tainted money and passed it to the accused and that CBI officials rushed to the spot and apprehended the accused. He admitted of money having been recovered from the possession of the accused though he tried to avoid to remember that it was he who had recovered it from the right pocket of pant of accused and that the money was worth Rs. 12,000/-. Then he said the money was recovered from the possession of accused, but he did not remember the exact amount. He also admitted that the numbers of currency notes (Ex.P1 to P-120) recovered tallied with the numbers written in handing over memo, though he again said that he could not say if these were the same which were recovered from the accused. He, however, admitted his signatures on the recovery memo (PW1/C) and the same having been prepared at the spot. He also conceded that the goods were unloaded and compared with the list but again tried to forget if they were in excess. He admitted his signatures on the seizure memo PW1/D pertaining to excess delivery, but tried to forget if there were any excess goods found in the delivery. He also identified the trousers of accused and also his signature on the bottles containing washes. With regard to certain facts put to him such as currency notes of Rs. 12,000/- in the denomination of Rs. 100/- each, noting down the numbers of those notes in the handing over memo, the treatment of the notes with chemical powder; the accused being asked to dip his fingers in the glass tumblers; the washes of two hands being taken into separate bottles; the goods received being in excess of the order etc., he deposed that did not recollect these facts. He also tried to forget that it was he and PW7 who had compared the currency notes with the handing over memo and found them to be correct. He also tried to introduce two other persons accompanying the accused, but he did not remember their names. It is noteworthy that specific suggestions were given to him by the learned defence counsel that no extra goods were recovered from the trucks and that he had signed the slips (Exhibit PW4/A1 and A2) subsequently. He denied these suggestions to be correct. Significantly, suggestions were given to him by the defence that accused had not accepted the bribe money or kept it in his pocket. These were denied by him to be correct. Further in answer to a question put by the learned defence counsel this witness stated that he did not remember from

which hand complainant gave tainted money to the accused.

16. Though PW1 and PW4 had stated at some stage of their depositions about the presence to Mr. Ganpat and Mr. Vinod, but it was stated by PW1 that those two persons slipped away. The evidence about the accused being the main person to demand the bribe and he being the only person who contacted PW1 at his office at the time of trap are consistent that it was he who had demanded and accepted the money.

17. Having seen above that PW1 and PW4 though tried to destabilise the prosecution case, but their testimonies as a whole would lend some credence in support of prosecution case instead of demolishing it. Further in the background of the testimonies of PW7 and PW8 to be seen hereafter, it is seen that in certain areas they substantiated their testimonies. That being so, the entire testimonies of PW1 and PW4 cannot be rejected as distorted and unreliable.

18. PW7 testified about the demand of Rs. 12,000/- by the accused from the complainant (PW1) by categorically stating that accused demanded Rs. 12,000/- from the complainant, to which latter replied "PAYMENT TABHI HOGI JAB TUM HAME SAMAN DIKHAOGI". On this, the accused replied stating "LO JI AAPKA EXTRA SAMAN NIKAL AYA HAI, MERI PAYMENT KARO KYONKI MAINE ISME SE RUPAYE GANPAT AND VINOD KO BHI DENE HAI, WO MERI INTAZAR MEIN HONGE". He said that thereafter, accused opened the packet and took out the goods. On being satisfied, the complainant took out the tainted money of Rs. 12,000/- and gave it to accused who kept it in the right side pocket of his pant. He said that the accused was challenged for having taken the bribe to which he kept quiet. Thereafter, PW4 took out the tainted money of Rs. 12,000/- from the right pocket of the accused and he along with PW7 compared the numbers of the recovered amount with the numbers already noted in the handing over memo and found them to be tallying. He said that the recovered notes Ex.P1 to P120 are the same which were provided by the complainant for trap and were given to the accused and were recovered from his possession. This witness was subjected to lengthy cross-examination by the defence counsel, to which he stood without any deviation. He maintained about the demand, acceptance and recovery of the bribed money in his cross-examination. There is no reason, whatsoever, of any kind to doubt the testimony of this witness. The learned Special Judge has rightly recorded about the reliability of this witness.

19. PW8 also corroborated PW7 in material aspects of the prosecution case. This witness was also subjected to lengthy cross-examination by the learned defence counsel. His testimony to the effect that the complainant produced Rs. 12,000/- of the denomination of Rs. 100/- each along with two slips containing the details of the extra items to be provided by the accused and that the bribed money was kept by the accused in the right pocket of his pant and was recovered by PW4, has remained un-assailed. Further, his statement that said money was compared with noted numbers and was found to be correct, also remained unchallenged. In his cross examination, as well, nothing has been brought to doubt his testimony.

20. PW7 and PW8 have corroborated each other on material aspects of the case. There is no reason to doubt the testimony of these witnesses. The learned Special Judge has rightly relied upon them. From the testimonies of PW1, 4, 7 and 8, as discussed by the learned Special Judge, and also noted by us above, the case of the prosecution regarding the accused having demanded Rs. 12,000/- from the complainant and ultimately having accepted the same and finally the same having been recovered from him, stands proved beyond any doubt.

21. PW5 is an expert witness, who is the Principal Scientific Officer in CFSL. He had compared the questioned documents PW4/A1 and A2 with the admitted specimen writing and signature of the accused. He proved his report Exhibit PW5/B and confirmed that the questioned writing on Exhibit PW4/A1 and A2 was in the handwriting of the accused. There is nothing in his cross to suspect his testimony. From this also, the prosecution succeeds in proving that slips (Exhibit PW4/A1 and A2) are in the handwriting of the accused. It has already been seen above that these are the slips which were proved to have been given by the accused to the complainant and the complainant presented the same to CBI along with his complaint. Since there is a mention of these two slips in the complaint (Exhibit PW1/A), it is further established that the slips were available with the complainant at the time of writing of the complaint.

22. The case of Banarasi Dass (*supra*) relied upon by the learned defence counsel was decided on its own facts. In that case, the main complainant (PW2) not only resiled from her previous complaint and took a somersault, but also admitted that the other independent witness, Gurmej Singh (PW4) was not present when accused made a demand of Rs. 400/- from her. Gurmej Singh also beside disowning his statement u/s 161 of Code of Criminal Procedure in its entirety, stated that he was not present either when the bribe was demanded or when the same was accepted. Further PW2 not only admitted that the accused had apologized, but also she requested the court to accept his apology. The other witnesses PW10 and PW11 were admittedly not the witnesses of the demand and acceptance of money by the accused. Though, the main complainant and the shadow witness turned hostile, the High Court had drawn presumption based on the statement of the recovery witnesses PW10 and PW11. It was in the background of these facts that the Apex Court held that the High Court fell in error insofar as it has drawn the inference of the demand and the receipt of the illegal gratification from the fact that the money was recovered from the accused. The Court specifically held that since the prosecution has not been able to establish evidence of demand and acceptance from the statements of PW2 and PW4, the accused was entitled to some benefit on technical ground of two witnesses, viz., PW2 and PW4 turning hostile. For substantiating its finding that the substantive evidence of demand and acceptance was essential, the reference was also made by the Apex court to its judgment *C.M. Girish Babu Vs. CBI, Cochin, High Court of Kerala*, . Reliance was also placed on the judgment of *Suraj Mal Vs. State (Delhi Administration)*, where in the Apex Court took the view that

some recovery of tainted money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.

23. From the evidence of PW7 as discussed above, it has been noted that the accused not only demanded and accepted the bribe of Rs. 12,000/- for doing favour of giving surplus goods to the complainant than the ordered, but the said amount was actually recovered from the accused. The testimony of this witness also finds corroborated from the testimony of PW8 and also to some extent from the statements of PW1 and PW4 as well. From the above discussion, I am of the view that learned Special Judge was right in holding that the case against accused was proved beyond reasonable doubt. I do not see any illegality or infirmity in the findings of conviction recorded by learned Special Judge.

24. Coming to the question of sentence, learned Counsel for the Appellant/accused submitted amongst others that the accused is presently aged about 51 years and that the case has protracted for more than 20 years and the fact that the accused has also remained in the custody for about three months and keeping in view his age, he may be sentenced for the period already undergone. With regard to the sentencing of the accused involving illegal gratification, the law does not permit any scope of leniency. Though the occurrence had taken place nearly 22 years back, and during all this period the accused has gone old, but these factors cannot be invoked to reduce the sentence than the minimum prescribed under the Act. In the case of State of Andhra Pradesh Vs. V. Vasudeva Rao, , almost similar situation was before the Apex Court. While noting down the legislative intent of prescribing minimum mandatory punishment of one year, the court held as under:

31. In the present case, how could the mere fact that this was pending for such a long time be considered as a "special reason"? That is a general feature in almost all convictions under the Act and it is not a specialty of this particular case. It is a defect inherent in implementation of the system that longevity of the cases tried under the Act is too lengthy. If that is to be regarded as sufficient for reducing the minimum sentence mandated by Parliament the legislative exercise would stand defeated.

32. Considering the age of the accused, we reduce only the sentence to the minimum of one year without touching the fine imposed, but do not find any justifiable reason to reduce it below the minimum.

25. In view of my aforementioned discussion, I have no reason but to uphold the conviction of the Appellant/accused. However, keeping in view the entire gamut of factual matrix, I am of the view that ends of justice would be met in imposing RI of 1 year on each count. Rest of the order regarding fine and imprisonment in

default of payment thereof shall remain as before. The substantive sentences shall run concurrently. The period of imprisonment, if any, already undergone by convict shall be set off. The accused/ convict shall be taken into custody to undergo imprisonments. The appeal is disposed of accordingly.